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Committee on Economic, Social and Cultural Rights

Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights

Initial reports of States parties due in 1997

Namibia*

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Abbreviations

Acronym	*Name*
ARV	anti-retroviral
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
EPZ	export processing zone
FAO	Food and Agriculture Organization of the United Nations
GDP	gross domestic product
GNP	gross national product
HDI	Human Development Index (of the United Nations Development Programme)
HDR	Human Development Report
HRDC	Human Rights and Documentation Centre (of the Faculty of Law, University of Namibia)
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organization
LAC	Legal Assistance Centre
LFS	Labour Force Survey
LRDC	Law Reform and Development Commission
MOHSS	Ministry of Health and Social Services
MTPS3	Medium-Term Plan Survey 3
MSD	Maternity Leave, Sick Leave and Death Benefit Fund
NDHS	Namibia Demographic Health Survey
NIED	National Institute for Education Development
NDP	National Development Plan
NGO	non-government organization
NHDR	Namibia Human Development Report (of the United Nations Development Programme)
NHIES	Namibia Household Income and Expenditure Survey
NLFS	Namibia Labour Force Survey
OHCHR	Office of the United Nations High Commissioner for Human Rights
SADC	Southern African Development Community
SMEs	small and medium enterprises

Acronym	*Name*
SWAPO	South West Africa People's Organization
UN	United Nations
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund
WHO	World Health Organization
VTC	vocational training centre
WASCOM	Wages and Salaries Commission

I. Introduction

1. Namibia is a party to a number of international conventions and treaties commonly referred to as international human rights law instruments, which includes the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was ratified on 28 February 1995. The lists of other major instruments, together with the dates of signature/accession/succession are given in the Appendix. Namibia welcomes the position of the Committee which accepts that the initial report which was due since 28 February 1998 but only submitted in 2011 be combined with the 1st and 2nd periodic reports, which were also due for submission on 28 February 2000 and 28 February 2002 respectively.

2. In order for Namibia to meet and respect her international obligations, the Government established an Inter-Ministerial Committee on Human Rights and International Humanitarian Law, which is coordinated by the Ministry of Justice. Namibia is therefore pleased to present her three Reports; the Initial, First and Second periodic Reports combined in a single document. The report is divided into two parts: part 1 which contains general information, and part 2 which contains substantive rights recognized under relevant articles of the Covenant.

3. This report was compiled by the Ministry of Justice based on information received from Government Offices, Ministries and Agencies (OMAs) as well as research information and reports from relevant non-governmental organizations (NGOs). Civil society organizations were given an opportunity to give comments on the draft report.

II. Part of the report relating to general provisions of the Covenant

Article 1: The political situation

4. The people of Namibia experienced more than 100 years of colonial rule. After a lengthy liberation struggle, the country conducted its first free and fair elections under the supervision of the United Nations in November 1989. Since the attainment of independence on 21 March 1990, the country has conducted four other internationally recognized free and fair elections at national and regional levels.

5. Article 1 of the Namibian Constitution states that "all power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State".

6. The Electoral Act, Act No. 24 of 1992 as amended by the Electoral Amendment Act, Act No. 23 of 1994 reformed and restructured the colonial unfair arrangements and translated to the ballot box, through the democratic process, the provisions of Article 1 of the Constitution.

7. Namibia has a multi-party system of government and all citizens have the right to participate freely in all Governmental structures directly or through their freely elected representatives at the national, regional and local government levels. Such elections are conducted in terms of the Namibian Constitution and the Electoral Act, 1992 (Act No. 24 of 1992). There is an independent Electoral Commission established in terms of section 3 of the Electoral Act, which has the "exclusive authority to supervise and control in a fair and impartial manner any elections in the country".

8. The Electoral Commission consists of:

- The Chairperson of the Commission; and
- Four other persons of the Commission appointed by the President.

9. Since independence on 21 March 1990, Namibia experienced political stability, peace and tranquility, with one exceptional case of the attack at Katima Mulilo town by secessionists, which took place in the Caprivi Region in 1999.

10. Article 1 of the Namibian Constitution provides that all powers shall vest in the people of Namibia, who shall exercise their sovereignty through the democratic institutions of the State. The general population exercises these powers through regular elections.

11. In Namibia, all citizens are subject to the law and have an equal access to the public service. Considering the colonial history of the country, during which time the policy and the law of the colonial occupying power were systematically aimed at disadvantaging the majority black population, the framers of the Namibian Constitution saw it fit not only to condemn racism and apartheid, but also to attempt to correct some of the wrongs of the past. To this end, Parliament was empowered by the Constitution to promulgate affirmative action legislation aimed at achieving a balanced structuring of the public service, including the police, the defence force and the prison service.

12. Article 23 (2) of the Constitution provides that "Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defence force, and the prison service."

13. Article 23 of the Namibian Constitution promotes affirmative action in general terms. This leaves the interpretation of the constitutional provision to the whims of individual employers and other key players. Such a situation will in turn tend to promote arbitrariness and breaches of human rights. To avoid these pitfalls, the Government passed the Affirmative (Employment) Act, 1998 (Act No. 29 of 1998) which provides for affirmative action measures to achieve equal opportunity in employment for racially disadvantaged persons, women and persons with disabilities. The Public Service Commission has also been pursuing an affirmative action programme upon the authority of the above-quoted constitutional stipulation.

14. The State considers all Namibians as one people belonging to one nation. Racial discrimination by the Government and its agencies and private persons or institutions has been prohibited and is criminalized by the Racial Discrimination Prohibition Amendment Act No. 26 of 1991. There is therefore no question of condoning or perpetuating the domination of one race/tribe/group of Namibian society over the other. There will neither be legal nor political support for such a retrogressive scheme.

15. The Preamble of the Constitution provides, amongst other things, that "we the people of Namibia will strive to achieve national reconciliation and to foster peace, unity and common loyalty to a single state." The Namibian Government through constitutional statements has promoted a policy of national reconciliation which entails forgiveness of those who had fought against freedom and independence.

16. The Law Reform and Development Commission (LRDC) under the Ministry of Justice, is tasked to review and initiate changes to existing laws which offend the spirit of the Constitution.

17. Article 19 of the Namibian Constitution guarantees that every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.

18. Namibia has a rich and diverse cultural heritage, in terms of African and European traditions, and also physically, for instance in the form of rock art. However, in the past, the cultural differences were accentuated through racism, exclusive ethnic allegiances and the colonial strategy of "divide and rule". In contrast, it is now understood that there is a need for Namibians to develop mutual understanding and tolerance and to regard each other as equals, as a new and united nation is built.

19. One of the first concerns has therefore been to record and understand the cultures that exist in Namibia. The National Archives and the State Museum have been engaged in research and education concerning Namibian cultures, and the struggle against racism in Namibia. There have been displays at the Museum about Namibia's liberation struggle, and the role played in this by the United Nations, the solidarity movement, and Namibian leaders. Traditional knowledge and customs are also being gathered in regard to the natural environment. Major exhibitions of rock art and other Namibian art have been mounted in the museum to show not only the characteristics of a particular ethnic group, but also Namibian art as an invaluable contribution to the world of art.

20. It is well known that the system of apartheid rule deliberately divided the ethnic components of society in Namibia. This created much social tension and division in the society. Namibia has a number of minority communities such as the Khoi-khoi, the Ovazemba and the Ovahimba. An effort is underway, within the means of the Government, to integrate and uplift these formerly marginalized communities into the mainstream of society.

21. In 1996 the Government approved a Decentralization Policy in which the objective was to transfer political, administrative, legislative, financial and planning authorization to Local Authority Councils. In this respect, the Decentralization Enabling Act, (Act No. 23 of 2000), the Trust Fund for Regional Development and Equity Provisions Act, (Act No. 22 of 2000) and the National Housing Development Act, (Act No. 28 of 2000) play an active role as institutional frameworks to facilitate the functions vested with the local authorities to plan and bring development to their communities.

Article 2: The constitution, legislation and other policy measures

22. Namibia is a party to various international human rights treaties, covenants, conventions and protocols, and is therefore obliged to conform to their objectives and obligations. The Namibian Constitution has been widely praised for its specific attention to gender equality and the rights of women.

23. Article 10 of the Namibian Constitution affirms equality and freedom from discrimination, by providing that:

> "(1) All persons shall be equal before the law
>
> (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status".

24. Article 14 supplements these provisions by affirming equality between men and women in all matters relating to marriage and the family. The constitutional provisions are supplemented by references to equality for women in the non-binding Chapter 11 of the Namibian Constitution, on principles of state policy. Whereas these principles are unenforceable, they are intended to guide Government in making and applying laws and to guide the courts in interpreting any laws based on them. Women or men who believe that

they have experienced discrimination on the grounds of gender can bring a court challenge under the Constitution.

25. The Married Persons Equality Act, No. 1 of 1996 made broad and sweeping innovations to the status of Namibian women, without providing the legislative detail to affect the day-to-day lives of the majority of the women in Namibia. One third of the Namibian population is comprised of rural women. The Married Persons Equality Act abolished the concept of marital power, by virtue of which the husband exercised authority over the property of his wife. The Act amended the matrimonial property law of marriages in community of property; it provided for the domicile of married women, as well as for the domicile and guardianship of minor children. The Act also regulates the liability for household necessities of spouses married out of community of property.

26. Although Namibia has made much progress in improving living conditions for its rural population since independence in 1990, the majority of rural women need to remain in focus. This has been the concern of Government, despite pressures from urban elites for city-orientated preference. The need for a balance between rural and urban development is a constant concern, whether it relates to domestic violence or to issues of inheritance and succession.

27. The formulations of the domestic violence law, The Combating of Domestic Violence Act, (Act No. 3 of 2003) necessitated human rights training on gender violence for the Police in general in order to be equipped to regulate and enforce this law in the rural community. These issues were addressed in the rank and file of Police and training programmes were implemented nationwide from late 1998 until the end of December 2000.

28. As regards the issue of inheritance, despite the continued operation in Namibia of section 18 of Proclamation 15 of 1928, determining the so-called "Black estates" of those who died intestate, the inheritances and thus well-being, of women and children, are widely affected, especially in the north of the country. This happens through the "grabbing" of the estate of the deceased by relatives, often leaving the widow and children destitute. This is a particular problem for the rural population.

29. The Succession Bill prepared by the Ministry of Justice is at an advanced stage, providing for one law for the nation irrespective of race or gender, so that customary practices are upheld, whilst will writing is encouraged as a safe mode for generational property transfer. As a group, rural women represent a significant marginalized portion of the population. Government policy is to ensure equal gender representation in all appointments, as is practically possible. With time this enlightened constitutional provision should bear abundant fruit, guaranteeing a strengthened democracy and balanced development. The situation on the farms and in the rural areas, however, remains a major challenge for Government human rights planning, especially in view of the vastness of the land surface and the paucity of the population, resulting in remote habitations, making centralization very difficult.

30. Various cultural festivals have been organized in the regions and have attracted great public interest. Traditional crafts are being fostered, not just because of the culture which they convey, but also as a means of livelihood. A new view of culture is being introduced into the school curriculum, and this is being supplemented through extracurricular cultural clubs.

31. Namibia has signed a number of international cultural agreements since independence. This has led to several stimulating exchanges of artists with countries of Africa, Asia, the Americas and Europe. There has been closer collaboration within the Southern African Development Community (SADC) on culture.

32. The College of the Arts, Namibia's main institution for arts education and training, is engaged in a process to offer its services to a wider community, to be more engaged with African art forms, and to carry out research regarding Namibian music and dance.

33. Various cultural groups from all races have also been supported through grants by different donors/institutions, including the National Theatre of Namibia, the National Arts Gallery, the National Monuments Council, and a variety of smaller groups.

Affirmative action

34. Affirmative action in Namibia involves developing policies and taking appropriate legislative action to remove barriers formerly preventing disadvantaged group members from enjoying equal access to public goods and services such as employment, education, housing and health care. In the area of employment, the object of affirmative action is to ensure that persons who belong to disadvantaged groups are equitably represented in the various occupational levels of a particular employer's workforce.

35. The Affirmative Action (Employment) Act No. 29 of 1998 provides for the establishment of the Employment Equity Commission, which oversees implementation measures to achieve equal opportunity in employment in accordance with Article 10 (equality and freedom from discrimination) and Article 23 (apartheid and affirmative action) of the Namibian Constitution.

36. The Act is a constitutional strategy to redress the barriers, through appropriate affirmative action plans, the conditions of disadvantage in employment experienced by persons in designated groups arising from past discriminatory laws and practices. The Act does not require the employer to create new positions of employment, to hire or promote a fixed number of people during a given period, or to hire or promote persons who are not suitably/adequately qualified.

37. An employer is also not required to take decisions, which are an absolute bar to the recruitment or promotion of persons not belonging to a designated group. The Act only requires that preferential treatment should be given to suitably qualified members of designated groups and where there is more than one suitably qualified person for a position the employer must select the candidate who belongs to more than one of the designated groups. A "suitably qualified person" is defined as "a person who has the abilities, formal qualifications or relevant experience for a position of employment". The Act defines "disadvantaged groups" as black persons, women and disabled people.

38. Concerning the minimum requirement for the realization of the maximum steps to implement human rights, the Namibian Constitution is progressive and inclusive, as regards human rights provisions. Both the fundamental human rights and freedoms (Chapter 3) provisions of the Namibian Constitution and its principles of state policy provide a level of commitment, which set a precedent in terms of the scope of the commitment of the state to its citizens.

39. A number of these rights, such as "education for all" (Art. 20(1)), provide objectives, requiring immediate implementation. The Government has worked hard to realize these rights, as manifest at the commencement of each academic year, in its ability to accommodate the admission of learners into already congested academic institutions.

40. The Government has established the National Institute for Education Development (NIED) at Okahandja, for the purposes of educational planning. New schools continue to open up around the country, and in some instances schools convened without properly built structures.

41. The concept of a hierarchy or priority of rights always exists where the weather is an element and the resources of the State are limited. Namibia suffers recurrent drought, and

drought-relief food supplies have to be offered to impoverished households, unable to make ends meet from their own resources.

42. In this context, the supply of essential food to the malnourished population takes precedence, anything less would be inhumane. Similarly, the provision of housing receives attention, with the Ministry of Regional and Local Government, Housing and Rural Development being dedicated to house the people.

43. The legacy of German colonialism and thereafter South African administration under the League of Nations mandate was that the country was settled and farmed by Germans and South Africans, who took the most suitable land for cattle and game farming, with the native Africans consigned to a labour reserve to service South West Africa and South Africa. The country also served as a source of cheap minerals.

44. Under the existing economy, 5% of the population controls 70% of the country's gross domestic product, 11.2% of the total population which is of European origin earns 51.5% of the total annual income.

45. Namibia is emerging from a long period of colonial oppression. Large-scale land alienation took place in Namibia, creating discontent and land hunger. In the country, land per capita amongst whites compared to land per capita amongst blacks runs at 300 times, explaining the underdevelopment in the rural areas.

46. Features of Namibia's economy are its historical export-orientated (to South Africa) economic activity, and, like most developing countries, primary products render it susceptible to global market price fluctuations. For the period 1996-97 the GDP in Namibia was US$ 2,067 – countries with a higher GDP in Southern Africa at the same time were Botswana with US$ 4,936, Mauritius with US$ 4,173 and South Africa with US$ 2,989 respectively.

International assistance and development

47. As regards development, Namibia, through its international cooperation in the context of economic, social and cultural rights, development co-operation assistance is used on a priority basis to promote these rights.

48. At independence, in view of the poor economic prospects facing the newly independent country, donors were invited to a pledging conference under the auspices of the United Nations in New York in June 1990, to explain the problems of the country and to mobilise external resources.

49. Thus, development aid emerged as a direct result of the decolonization process, where colonial relations of exploitation gave way to official state-to-state relations between sovereign States. The approach of the donors was based on humanitarian assistance and stated that solidarity was a principal motivation for the provision of assistance to the newly independent State.

50. The sectors that received the support of the donors' conference coincided with the sector priorities defined by the Government of Namibia at the time of the donors' pledging conference. These were agriculture, water and rural development including forestry, education at all levels (but with the main focus on primary education), health and social services and housing. These remain priority areas for Government. Additionally, funds were provided for the supply of electricity, roads and telecommunications for previously neglected areas in rural communities.

51. Through entering into development cooperation agreements with various donors, Namibia was able to access extra funds outside the specific country allocation to assist women in development, culture, environment, democracy and human rights.

52. A good example of the technical assistance which was developed is the "human rights and law enforcement" project for policemen and women, supported by the Embassy of Finland in Namibia and the Royal Netherlands Embassy in Namibia, working in conjunction with the Namibian Police and the Ministry of Justice.

53. Under this initiative, project workshops were held in all the regional capitals of the country over a period of two years. At each of these workshops, two trainers were selected to become human rights trainers in their regions. Those selected to become regional human rights trainers plus two Police trainees from the Police College were then given further train-the-trainer instruction via three workshops in the capital, Windhoek, after which these persons were deployed in their regions and at the Police College, as human rights trainers.

54. So far this project has run smoothly and the first batches of trainers were certificated on the 9 December 1999. The aforementioned project seeks to create a culture of human rights respect within the rank and file of the Police. A by-product of the project is the production of the handbook on human rights for general use within the Namibian Police Force.

55. Namibia takes a keen interest in the realization of the right to development, which seeks to redress the inequities of the unjust economic order, which has hitherto prevailed. This interest is concomitant with Namibia's aspiration for reform of the international system including the United Nations system with its selectively constituted Security Council, overriding the democratically constituted General Assembly.

56. The right to development seeks to create the conditions for self-sustaining development within states that are described as "underdeveloped". Underdevelopment presupposes the inability of the state to guarantee the minimum conditions for the survival of its citizens. Subsistence rights relate to the basics of human existence – food, clothes and shelter. Without the provision of these to each citizen there can be no self-sustaining development.

57. The concern of the Government of Namibia to ensure, at a minimum, the survival of its citizens is manifest by its drought relief programmes, by its national HIV/AIDS campaign and its provision of bore-holes nationwide to provide clean drinking water to its citizens. The State also provides a social grant to its senior citizens currently in the amount of N$ 550 (US$ 67-00) per month.

58. In 1994, under the auspices of UNESCO, a feasibility study was carried out, which highlighted the need for human rights education in Southern Africa. A pilot project was proposed to develop educational materials, teaching methodologies appropriate to the subject and to train curriculum developers and teacher educators.

59. Ultimately, the project was called "Education for human rights and democracy in Southern Africa" and it covered countries such as Mozambique, Namibia and Zimbabwe. The project aimed to place issues such as human rights and democracy in the mainstream school curriculum of southern African states. By changing attitudes through education, the project created a regional culture of respect for human rights. In Namibia the project is administered through the NIED.

60. The first activity was a workshop in Windhoek in 1998. A generic resource manual was developed for use in all schools in the regions. In 1999 Longman Namibia (PTY) Ltd in association with UNESCO published "Education for human rights and democracy in southern Africa" which is a teacher's resource manual.

Equal treatment

61. The policy of equal treatment practiced in Namibia is illustrated in two areas – racial discrimination and discrimination against women. Equal treatment of all races was a central

principle incorporated in the Namibian Constitution arising from the experience of apartheid. Under the apartheid system, racial segregation was the institutional basis of the colonial state.

62. Article 10 of the Namibian Constitution expressly prohibits discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

63. Since the concept of human rights did not feature in the pre-independence legal arrangements, it would be true to say that women, per se, were objects of discrimination, and depending on their ethnic origins, had few, if any, rights. The white male ruled supreme and the "marital power" resided with the male partner to the extent that a white married woman was unable to contract (other than a contract for household necessities) without the consent of her husband. In the rural areas black women were often oppressed by archaic customary practices, which saw them as objects and extensions of their husbands' properties. The legal obstacle of marital power was abolished by the Married Persons Equality Act No. of 1996.

64. In recognition of the need to address the problem of gender discrimination, the Government established a Department of Women's Affairs in the Office of the President in 1995 and this was transformed into a full Ministry in 1999. As our Founding President H.E. Sam Nujoma said in December 1997:

> "The need for gender integration into all government policies, procedures and programmes is very eminent because women's rights have to be promoted and protected".

65. In 1997, Government adopted the national gender policy to redress inequalities between men and women. The document included practical guidelines and strategies for the implementation, monitoring and evaluation of the constitutional provisions for gender equality. The document also provided for the establishment of a legal gender complaint mechanism accessible to all, and the recognition of people with disabilities.

66. At the political level, across the party spectrum, candidate lists increasingly feature women, often in equal numbers to men, the only constraint being potential women candidates. It is popularly understood that economic, social and cultural development requires the contribution of the women and men of Namibia.

67. The categories of residents in Namibia are nationals, permanent residents, temporary residents and those with refugee status. Article 21 (1) of the Constitution states that all persons have the right to move freely throughout Namibia and reside and settle in any part of the country. The Namibia Refugees (Recognition and Control) Act, Act No. 2 of 1999, provides for the rights of refugees. Whereas nationals, permanent residents and temporary residents enjoy unencumbered rights under the national economy (residence, work, taxes etc.), refugees who apply for refugee status in Namibia and every member of their family have rights to remain in Namibia pending the granting of refugee status. Once refugee status is accorded, the refugee may remain in Namibia as a recognized refugee. He or she is required to reside in a reception area or a refugee settlement as determined by the Minister of Home Affairs and Immigration. The Act provides for the establishment of an Appeal Board to determine appeals against the decisions of immigration authorities.

Application of the international treaties

68. After independence, a new approach was formulated, as embodied in Article 144 of the Namibian Constitution, which reads as follows:

> "Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia."

69. In terms of Article 144, Namibia has adopted the monist approach. Under this approach, international law is directly applicable in the national legal order by making such rules directly applicable and thus formally not requiring further measures for their legality in Namibia. Thus, the Namibian Constitution explicitly incorporates international law and makes it part of the law of Namibia.

70. In Namibia, the Constitution is the supreme law of the land. It excels in being a constitution guaranteeing human rights by comprehensive coverage and provisions set out in clear language. All human rights instruments ratified or acceded to by Namibia are part and parcel of its domestic law and should be applied as such.

71. Most human rights issues are justiciable. In other words, they can be enforced by action in court, if necessary, as their protection can be secured through the court. In terms of Article 25 (2) of the Constitution, any person who alleges that his or her human rights have been violated or are likely to be violated may seek redress in the High Court. If he or she is dissatisfied with the decision or judgment of the High Court, he or she may appeal to the Supreme Court.

The judiciary

72. Article 78 (2) and 3 of the Namibian Constitution guarantees the independence of the judiciary and provides that courts shall be independent and subject only to the Constitution and the law. The judiciary in Namibia consists of the Supreme Court, High Court and the lower courts. The Supreme Court hears and adjudicates upon appeals emanating from the High Court. The High Court has original jurisdiction to hear and adjudicate upon civil disputes and criminal prosecutions, including cases that involve the interpretation, implementation and upholding of the Constitution. Traditional courts are recognized by the Namibian Constitution and are regulated by the Community Courts Act, Act No. 10 of 2003, and continue to play an important role in the administration of customary law by the different ethnic groups.

73. Apart from judicial protection, Article 89 of the Constitution establishes the institution of Ombudsman. The Ombudsman has a constitutional mandate and powers in terms of the Ombudsman's Act, Act No. 7 of 1990, to protect, promote and enhance respect for human rights in the country. He is empowered to investigate allegations of human rights violations *mero motu* or after receiving a complaint from an individual.

74. He/she has powers over any elected or appointed official or employee of any organ of the central or local government, any official of a parastatal managed or controlled by the State, or in which the State or the Government has a substantial interest. The Ombudsman is independent, and the Constitution prohibits any interference with the Ombudsman in the exercise of his/her functions. The Ombudsman is in the process of establishing a human rights unit in his Office, dealing specifically with human rights education and awareness-raising campaigns. Besides its head office in Windhoek, the Ombudsman also has two regional offices; one in the south of the country and another in the north.

75. The Government has set up an Inter-Ministerial Technical Committee for Human Rights and IHL in the Ministry of Justice to respond to human rights issues in the country and to compile State reports on the implementation of various human rights instruments. The Inter-Ministerial Committee is constituted by Government officials tasked with human rights or similar responsibilities, from the line ministries.

76. There is also a state-funded legal aid scheme under the Ministry of Justice, which offers legal assistance and representation to indigent persons who may wish to seek redress in the courts or before the Ombudsman for abridgement of their human rights. In this way, the Ministry of Justice plays a useful role in the protection of human rights in Namibia.

There is an independent and free legal profession, the LAC, which advises and represents persons seeking redress for alleged human rights violations.

77. During 2005, government adopted the Government of the Republic of Namibia's Civil Organizations Partnership Policy. The overall goal of the policy is for the Government, in consultation with civil society, to create a "Working Partnership", a partnership that works for the entire country, its citizens and their civic organizations and for the Government.

Access to information

78. The Namibian Constitution does not provide for an express right of citizens to access information held by Government. However, legislation and other legal measures (proclamations and notifications) are published in the Government Gazette on promulgation and are readily available at the Ministry of Justice Head Offices and most libraries, including the Parliament library, at a minimal fee.

79. Chapter 3 of the Namibian Constitution entrenches some of the human rights referred to in the various international human rights instruments. For example, the right to life is protected and the death penalty is totally abolished in Namibia. Personal liberty is protected. Freedom from torture or cruel, inhuman or degrading treatment or punishment is also protected, as is freedom from slavery and forced labour. The right to equality before the law is also protected. Freedom from discrimination based on sex, race, colour, ethnic origin, religion, creed or social or economic status is also protected, as is freedom from arbitrary arrest and detention. The right to a fair trial before an independent and impartial tribunal is protected, as well as the right to privacy. Various rights of the child, including the right to education, are also protected. Various fundamental freedoms such as freedom of speech, expression, thought, conscience and belief, association and movement are also protected.

80. Unlike the civil and political rights, the economic and most of the social and cultural rights are not enshrined in Chapter 3 of the Constitution. These rights are protected in Article 95 of the Namibian Constitution as principles to guide or inform policies the State would implement to enhance promotion of the welfare of citizens. The State is obliged to have regard to these principles when making laws. Nevertheless, in principle and according to the spirit of the Namibian Constitution, civil and political rights as well as economic, social and cultural rights are to be treated on equal footing and with the same emphasis by the Government. This was tested in the case of *Government of the Republic of Namibia and Others* v. *Mwilima and all the Other Accused in the Treason Trial 2002 NR 235 (SC)*. In that case, the accused (applicants) were all awaiting trial prisoners in a treason trial. They had been refused legal aid and launched an application in the High Court for an order directing the State that such legal aid should be granted. It was argued on behalf of the applicants that according to the Constitution the State has an obligation to provide legal aid to the applicants in order for them to have a fair trial as provided in Article 12 of the Constitution. The Government, on the other hand, argued that the provision of legal aid is provided in Article 95 of the Constitution as guiding principles of State policies, and that such legal aid is subject to availability of resources, and that such right was therefore not enforceable. The High Court ruled in favour of the accused/applicants, and ordered that the Director of Legal Aid should provide such legal aid. The State was dissatisfied with the ruling and appealed the case to the Supreme Court. The Supreme Court confirmed the ruling of the High Court and held that such right stems from the right to a fair trial in terms of Article 12 of the Constitution, noting that lack of representation could result in an unfair trial and that the Government has an obligation to uphold these rights as contained in the Constitution.

81. Some human rights may be derogated from during a state of national emergency or any period when a declaration of emergency under the Constitution is in force. However, derogation from or suspension of certain human rights is not permissible. They include the right to life including the prohibition of the death penalty; freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from slavery or forced labour; right to equality before the law; freedom from all forms of discrimination; the right to a fair trial; the various rights of the child; and freedom of speech, expression, thought, conscience and belief, and freedom of association.

82. In terms of the Namibian Constitution, international agreements binding upon Namibia under the Constitution form part of the law of Namibia. Nothing in law prevents a Ministry sponsoring a piece of legislation on any matter from ensuring that human rights protected under the Constitution or international human rights instruments are taken into consideration when drafting legislation. This helps to reinforce the country's commitment to the carrying out of relevant provisions of the Bill of Rights or international human rights instruments, or to make implementation easier to monitor and evaluate.

83. The Ministry of Justice has the final responsibility for the promotion and protection of human rights on behalf of the Government. To this end it ensures implementation of human rights. It does so when scrutinizing bills, i.e. draft legislation, to ensure that bills promote and do not violate human rights. The Ministry has, in collaboration with the University of Namibia, set up the Human Rights and Documentation Centre (HRDC), which was established in 1993. The centre is responsible for the promotion and dissemination of information on human rights. When it comes to implementing specific human rights referred to in the various international instruments, the Ministry or Government agency responsible for the specific items under the instruments is charged with the responsibility of implementing the rights protected.

84. For instance, the Ministry of Justice is responsible for implementing the right to a fair trial and freedom from torture together with the Ministries of Education, Home Affairs and Immigration, Safety and Security and Defense. The Ministry of Regional & Local Government & Housing & Rural Development, the Ministry of Gender Equality & Child Welfare and the Ministry of Youth National Service, Sport & Culture are responsible for implementing relevant aspects of the rights of the child. The Ministries are assisted in this regard by various governmental and non-governmental agencies and organizations engaged in various socioeconomic activities. Furthermore, Article 18 of the Constitution gives an aggrieved person the right to challenge administrative acts or decisions before a competent court or tribunal. In other words, Government officials and administrative bodies are constitutionally obliged to act fairly and reasonably and to comply with the requirements imposed upon them by common law and any relevant legislation. A competent court not only has the duty and power to enforce and protect their rights to administrative justice but is also empowered to award monetary compensation in respect of any damage suffered by aggrieved persons in consequence of the unlawful denial of those rights. Article 5 of the Constitution obligates the three Organs of the State, including the Executive, to uphold and respect the fundamental rights and freedoms spelled out in chapter 3 of the Namibian Constitution. It equally subjects natural and juristic persons to the provisions of Chapter 3 to the extent that it is applicable to them.

85. Chapter 3 of the Namibian Constitution contains fundamental human rights and freedoms. These rights and freedoms are to be respected and upheld by the Executive, Legislature and Judiciary. They are enforceable by the courts without detailing those rights and freedoms which relate to the economic, social and cultural rights of the citizen. Simply stated, these rights guarantee the protection of life, the protection of liberty, and respect for human dignity, prohibit slavery and forced labour, secure equality and freedom from discrimination, prevent arbitrary arrest and detention, guarantee fair trial, secure privacy,

guard the sanctity of the family, protect children's rights, secure property rights, defend political freedom, secure administrative justice, and cultural freedom, protect the right to education, spell out and defend fundamental freedoms defining the scope of such freedoms, prohibit apartheid, defending previously excluded or disadvantaged groups – all the stated rights and freedoms are non-derogable.

Press freedom

86. Media freedom has existed and been promoted in Namibia since independence. According to Reporters Without Borders World Press Freedom Index rankings for 2010 and 2011, Namibia tops Africa on press freedom. In 2008, Namibia was ranked 24th out of 173 countries in the world. It is one of the more media-friendly countries in Africa. Freedom of speech and expression and freedom of the press and other media is guaranteed under Article 21 of the Namibian Constitution and this freedom is respected by the Government. Parliament enacted the Broadcasting Act, Act No. 9 of 1991, and Namibia Communications Commission Act No. 4 of 1992 to provide the legal framework to govern and create a liberal environment for the media in the country.

87. The Namibia Broadcasting Corporation (NBC), which is the only public broadcaster, has 8 radio services and one television channel. It broadcasts in 6 languages from Windhoek and almost in all the indigenous languages from transmitters in their respective areas. There is one privately owned television channel (One Africa), Namibia's most popular commercial free-to air TV station, and other international channels via cable satellite such as the BBC, CNN, SABCAfrica etc. There are around 20 private and community radio stations, BBC World channels which are available, and Radio France Internationale broadcasts on FM in the capital.

88. The NBC and the private press give coverage to opposition parties, even including views very critical of the government. Over the years, the media has continued to operate in an environment essentially free of government or ruling party interference.

89. The media, particularly the community radio stations, have contributed significantly to the public availability of information and are used as a tool to communicate with family and relatives who live in other towns and in the rural areas. The newspapers are also seen as valuable in the fight against corruption and to sensitize citizens on human rights issues.

90. In spite of its small population, Namibia has a varied and lively press. There are a number of print medias, five of these are dailies – the *Namibian* (English and Oshiwambo), *Die Republikein* (Afrikaans), *Allgemeine Zeitung* (German), *New Era* and *Namibia Sun* in English and other indigenous languages. The *Namib Times* appears only twice a week, and seven others appear weekly – the *Windhoek Observer*, the *Villager*, *Confidante*, the *Economist*, *Informante*, the *Southern Times* and *Namibia Today*, all published in English. *Insight Namibia* was launched in 2004 as a monthly current affairs magazine based on investigative reporting.

Social security and social welfare

91. In addition to the Labour Act, Act No. 6 of 1992, the Namibian Parliament has passed various pieces of legislation with regard to social security and social welfare, such as the Social Security Act No. 34 of 1994, National Housing Development Act No. 28 of 2000, and the National Disability Council Act No. 26 of 2004. These Acts provide the legal framework to promote and guarantee the social welfare of all the citizens. The Social Security Act provides for the establishment, constitution and powers, duties and functions of the Social Security Commission; provides for the payment of maternity leave benefits, sick leave benefits, medical benefits, pension benefits and death benefits to employees; provides for the funding of training schemes for disadvantaged, unemployed persons, and

to establish for that purpose the Development Fund; and provides for matters incidental to the aforementioned purpose of the Act.

92. Death benefits provided under the Social Security Act, Act No. 34 of 1994, do not apply to Defence Force members while on service as defined under section 1(i) of the Defence Force Act (Act 1 of 2002). A compulsory Life Insurance Group Scheme is in place for all Defence Force members. However, consultations between the Ministry of Defence and the Ministry of Labour and Social Welfare with a view to having the Defence Force members also covered by the Social Security Act are at an advanced stage of reaching an agreeable framework.

93. Defence Force as well as Police Force members are also excluded from the definition of workmen in the Workmen Compensation Act, Act No. 30 of 1941.

Protection of family and minors

94. Article 14 of the Namibian Constitution provides that the family is the natural and fundamental unit of society and is entitled to protection by society and the State. In Namibia, the term family legally refers to the nuclear family; for example husband, wife and their children. But Namibia is a society that also embraces the extended family, for example parents (including in-laws).

95. Under Namibian law, children are regarded as minors until the age of 21 when they become majors and are entitled to enter into legally binding contracts. Children below the age of 7 years have no legal capacity to act, however; children above the age of 7 years may be assisted by their legal guardians to enter into legally binding contracts. In terms of the Combating of Rape Act, Act No. 7 of 2000, girls and boys under the age of 16 years cannot consent to sexual intercourse. A minor may attain majority status if he or she is emancipated. The law also prohibits employing a child under 14 years and requires children to remain in school until the age of 16.

Marriage

96. Article 14 of the Namibian Constitution provides that marriage shall be entered into only with the free and full consent of the intending spouse between men and women of full age without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status. However, civil marriages in Namibia are contracted under the Marriage Act No. 25 of 1961 and are further regulated by the Married Persons Equality Act, Act No. 1 of 1996. Both men and women of 18 years and older have the right and are allowed by law to marry and found a family. The most important aspect of the Act was the abolition of the common law rule that the husbands had marital power over their wives. The effect of the changes was that married women became fully emancipated, with the right to enter into contractual agreements, own property, act as directors of companies and bind themselves as surety. Customary laws do not set a minimum age for marriage, but marriage generally does not take place before puberty, or before the attainment of an acceptable level of social maturity. Family consent is generally required for a marriage to take place. In most communities, the consent of both the intending spouses is generally necessary as well. A customary law marriage involves a series of negotiations between two groups and creates rights and responsibilities between all family members.

97. Despite the retention of customary law under Article 66 of the Namibian Constitution, the legal status of customary marriages remains dubious, because customary law marriages do not enjoy legal recognition. The LRDC has recommended enactment of legislation on the recognition of customary law marriages.

Racial discrimination and access to public service

98. During the period of illegal South African occupation, a racial system of governance called apartheid was implemented in the country. The people were segregated on the basis of race, and all power was vested in the hands of the white minority population.

99. In the process of drafting the Constitution, the founding fathers and mothers outlawed the racism of the past and adopted the policy of national reconciliation, so that all Namibians would join hands in developing the country in peace and unity, without looking back to the past iniquities of apartheid.

100. Parliament enacted the Racial Discrimination Prohibition Amendment Act 1991, which became law in December 1991. This statute rendered criminally punishable certain acts and practices of racial discrimination in relation to, inter alia, public amenities, the provision of goods and services, immovable property, educational and medical institutions, employment, associations, religious services and incitement of racial disharmony and victimization.

101. The Government has taken legislative measures through the enactment of the 1991 Racial Discrimination Prohibition Act to prohibit any person, central Government, local government institution or private institution from denying any other person access to or the use of any public amenity or any facility in a public amenity solely because such other person is a member of a particular racial group. The law further prohibits any person, private institution or local or central institution from applying any practice with respect to a public amenity a practice or policy whereby any facility or service available at such a public amenity is provided to members of the public on a segregated basis according to colour, race, nationality or ethnic origin.

102. The Government further amended certain colonial laws that sought to perpetuate racial discrimination whereby black persons were not permitted to live or own immovable property in urban areas. In addition, the law prohibits any person engaged in business, trade or profession for the provision of goods or services to the public to refuse or fail on demand to provide such goods and services to any other person because such other person is a member of a particular racial group.

103. In terms of the law, no association may, whether by a provision in its constitution or in accordance with a policy or practice, deny any person admission to membership of the association because such other person is a member of a particular racial group. Indeed, at present, there is no association whose membership is based solely on race, colour or ethnic origin. Thus, the membership of trade unions, the Law Society, farmers' associations, chambers of commerce, women's organizations, student unions, the accountants' institute and other professional bodies and political parties exhibits a multiracial character.

104. The policy of affirmative action has been given practical effect in the areas of education and employment. In terms of Article 23(2) of the Namibian Constitution, Parliament may enact legislation providing directly or indirectly for the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances arising out of past discriminatory laws or practices. Affirmative Action Act, the policy is being implemented in deserving cases. What does it mean?

105. The Government's policy of national reconciliation has been fully accepted by all Namibians. Over the years after independence, only a few cases relating to racial discrimination have come before the courts under the 1991 anti-racial discrimination law.

106. One of the methods used to counteract racial discrimination was through the work of the Ministry of Education and Culture as it was then called. A cross-ministerial National

Committee for Civic Education was formed, including governmental institutions, private organizations and institutions of Namibian civil society. The Committee drafted a blueprint for a framework for civil education in Namibia. Parts of this blueprint have been incorporated into a number of school curricula.

107. Namibia also combated racial discrimination through the social studies curriculum (grades 4-7), which addresses civil values, rights and responsibilities, causes of change and development that influence a peaceful and harmonious life in the family, community, country and the world. It fosters the development of attitudes such as commitment to human values of justice, equality, diversity, and human rights, and the development of competencies in making responsible judgments in terms of justice, equality and other democratic values. Accordingly, a number of basic competencies in the grade 4 syllabus address directly or indirectly issues of better understanding for each other, tolerance and friendship.

The legal status and specific implementation of the ICESCR

108. The people of Namibia experienced more than 100 years of colonial rule. After a lengthy liberation struggle, the country conducted its first "free and fair election" under the supervision of the United Nations from 7-11 November 1989. Since the attainment of independence on 21 March 1990, the country has conducted internationally recognized free and fair elections at national and regional levels.

109. Article 1 of the Namibian Constitution states that "all power shall vest in the People of Namibia who shall exercise their sovereignty through the democratic institutions of the State".

110. Namibia has a multi-party system of government. Therefore all citizens have the right to participate freely in all governmental structures directly or through their freely elected representatives – at the national, regional and local government levels. Such elections are conducted in terms of the Namibian Constitution and the Electoral Act, 1992 (Act No. 24 of 1992), as amended. There is an independent Electoral Commission established in terms of section 3 of the Electoral Act, which has the "exclusive authority to direct, supervise and control in a fair and impartial manner any elections under this act". In terms of section 5 of the Act, the Commission must consist of:

(i) The Chairperson of the Commission; and

(ii) Four persons as other members of the Commission, appointed by the President, with the approval, by resolution, of the National Assembly. Under the provisions of the Affirmative Action Act, those previously discriminated against as regards their participation in public affairs will receive favourable treatment.

Enjoyment of the rights, and refugees' status

111. Chapter 3 of the Namibian Constitution provides and guarantees the fundamental human rights and freedoms.

112. All persons legally resident in Namibia, including refugees, enjoy the fundamental rights and freedoms contained in Chapter 3. The status of refugees is determined by the international obligations under the Charter of the United Nations and the Charter of the Organization of African Unity (OAU).

113. The operative law in Namibia affecting refugees is the Namibia Refugees (Recognition and Control) Act No. 2 of 1999, which implements the conventions applicable to refugees to which Namibia is a Party. These are both the Convention relating to the Status of Refugees of 28 July 1968 and the OAU Convention Governing the Specific Aspects of Refugees in Africa of 1969. Section 2 of Act 2 of 1999 integrates into Namibian

domestic law the provisions of the 1951 Convention. Section 20(1) of the Namibia Refugees (Recognition and Control) Act requires that refugees reside in reception areas or refugee settlements.

The role of international cooperation in the implementation of the ICESCR

114. Due to its colonial history, Namibia was, prior to independence, isolated, and was not recognized by the international community. Since 1990 it has become a full and active member of the international community. This involvement stems from the conviction, gained from its own history, that Namibia has a responsibility to promote international cooperation, peace, security and respect for international law and treaty obligations. International relations form a vital component of Namibia's development strategy.

115. Namibia promotes international trade and support. She has succeeded in projecting a positive image of herself through a good record on human rights and national reconciliation. Whereas the country was previously isolated in matters of trade – trading previously almost exclusively with South Africa – now Namibia seeks to create and maintain just and mutually beneficial relations amongst nations.

116. The Constitution provides for the establishment of a National Planning Commission (NPC) in the Office of the President, whose task is to plan the priorities and direction of national development. The NPC Secretariat was set up shortly after independence and the enabling legislation for the Commission was passed in March 1994.

117. The Director-General of the National Planning Commission attends Cabinet meetings and is conversant with Namibia's development cooperation and so is able to ensure that priority is given to maximizing the realization of Namibia's economic, social and cultural rights, in the promotion of her development cooperation.

Article 3: Gender equality

118. There have been many significant law reforms to promote gender equality since Namibia became independent, but an analysis of these reforms shows that action in the area of the "public" sphere of political participation and formal employment in the public sector has taken precedence over action concerning the more "private" sphere of household economy. However, Article 10 of the Namibian Constitution states:

> "All persons shall be equal before the law
>
> No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status".

119. Article 23(2) of the Constitution states:

> "Nothing contained in article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices ..."

Measures taken to eliminate discrimination against women

120. The above-mentioned constitutional provisions applied to the first two local government elections and resulted in local councils that were 32% female after the first local elections in 1994, rising to 41% after the second local elections in 1998.

121. The Government during the term of office of H.E. Sam Nujoma, the founding President of the Republic, committed itself to electoral lists of 50% female, for the ruling party, and was seen to act accordingly. Various laws guarantee women's representation in

executive decision-making in the sectors of education, state enterprises, and sports, and an example of this is the composition of the National Sports Council.

122. The Affirmative Action (Employment) Act of 1998 requires specified employers to prepare affirmative action plans setting forth steps to improve the representation of disabled persons and women, in the workforce. Progress in implementing affirmative action measures is monitored by the Government through the Employment Equity Commission. Non-compliance results in disqualification of employers from state contracts and concessions.

123. It is also noteworthy to mention that the Traditional Authorities Act No. 25 of 2000, which provides procedures for official recognition of traditional authorities, requires that traditional authorities "promote affirmative action amongst the members of that community" particularly by "promoting women to positions of leadership". Although the Act does not contain specific monitoring or enforcement mechanisms, it at least provides a basis for encouraging greater participation by women in traditional leadership positions.

124. The Gender Research and Advocacy Project of the Legal Assistance Centre (LAC) has made and continues to make a major input in the advancement of women's rights in Namibia. No woman has approached the courts in Namibia since independence claiming sex discrimination.

125. The tax laws of Namibia now treat all individuals equally, men or women, married or single. The Labour Act, Act No. 11 of 2007, forbids discrimination in any aspect of employment on the basis of sex, marital status or family responsibilities, amongst other grounds. The Act guarantees 12 weeks of maternity leave to all female employees who have been working for the same employer for at least one year.

Equality in family law and protection

126. The Married Persons Equality Act No. 1 of 1996 has been identified as a milestone in the area of family law. This legislation removes discrimination against married women in the context of civil marriages. The Act abolished the marital power of the husband under common law. The married woman can also enter into a legal contract without the consent of the husband.

127. The Maintenance Act No. 9 of 2003 stipulates that parents have a legal duty to maintain their children. Both parents are responsible for the support of their children regardless of whether the children were born within or outside of wedlock and whether or not the parents are subject to any other system of customary law which may not recognize one or both parents' liability to the child. This new Act is important, as it provides relief for women who are most often left as the sole caregivers to children. Under the previous Maintenance Act of 1963, it was far more difficult for women to obtain a maintenance order against an unemployed father, even if the man held a substantial quantity of livestock and other property. However, under the new Maintenance Act, the petitioning parent can be paid maintenance in kind, such as with goats or cattle.

128. In 1999, the media described the year 1999 as the year of gender-based violence, which prompted law reform. Women's groups were set up to lobby for law reform in the area of violence against women. This resulted in the enactment of the Combating of Rape Act No. 8 of 2000, and the Combating of Domestic Violence Act of 2003. Recent research indicates that more than one-fifth of all violent crime reported to the Police is domestic violence. Since then, policemen and policewomen have been receiving human rights training in gender and violence. Fifteen Women and Child Protection Unit offices across the country offer special assistance in cases of violence. NGOs and other civil society groups provide shelter facilities, to which Government authorities refer victims of domestic

violence. The Namibian Police Women and Child Protection Unit has also implemented a referral agreement with a local NGO that offers counselling to victims of trauma.

129. In some parts of the country, mainly in the northern regions, the local community has built shelters near hospitals where pregnant women can stay during pregnancy, and the number of these shelters is increasing.

Government strategies on gender-based violence against women

130. In mid-2007, the Ministry of Gender Equality and Child Welfare, with the assistance of the United Nations, commissioned a survey on gender violence in Namibia. The survey covered the four regions in northern Namibia, and a subsequent study which was carried out in 2008 covered four more regions. The findings of the survey revealed that 34% of the all the respondents had experienced gender-based violence.

131. In November 1997, the Department of Women Affairs in the Office of the President (now the Ministry of Gender Equality and Child Welfare), issued a national gender policy which states:

> "The social structures and stratification, including the culture and legal systems, show clear and visible specific interests of those who dominate decision-making and political power, in this case, 'the males'".

132. The Policy supports efforts aimed at improving awareness among policymakers, planners, implementers, development agents and the general public of the provisions pertaining to women, in the Namibian Constitution. The policy provides a framework for implementing the constitutional provisions. Namibia is one of the few countries that have ratified the Convention on the Elimination of All Forms of Discrimination against Women without reservations. A new revised gender policy for the period 2010-2020 was officially launched during 2012.

Article 4: Legal limitations on economic, social and cultural rights

133. Article 21 (2) of the Namibian Constitution states as follows:

> "...the fundamental freedoms referred to in sub-article (1) of the Namibian Constitution should be exercised subject to the laws of Namibia".

134. Articles 21(2) and 24(3) of the Namibian Constitution seek to ensure that the constitutionally enshrined rights of Namibians in the areas of the economy, society and culture, amongst others, are not subject to limitations that are arbitrary, unreasonable or retroactive.

135. Article 21(2) and 24(3) further provides for security that the rights provided in the Namibian Constitution are not encroached upon in such a way as to alter the nature of these rights.

Article 5: Interpretation of article 5 of the Covenant

136. One of the outstanding features of the Namibian Constitution is that it is international law-friendly. This is confirmed by Article 144 of the Namibian Constitution, which incorporates international law into the laws of Namibia, and Article 96 (d), which requires respect for international law and treaty obligations. In other words, the Namibian Constitution explicitly incorporates international law and makes it part of the law of the land. Therefore, the Namibian Constitution does not necessarily require legislative

promulgation of international agreements in order for them to become part of the law of the land.

137. Although the conventions have not been incorporated into any national law by any legislation, we submit that those economic, social and cultural rights are enshrined in the Constitution; the rights are protected by the Constitution, which according to Article 1(6) is "the Supreme Law of Namibia" and these rights are wholly justiciable. Moreover, it is possible to invoke the Convention in a court of law or any tribunal, once signed and ratified. Cognizance should be taken of the fact that some international instruments specifically require domestication in order to be practically executable. In this sense the courts will give effect to the provisions of the ICESCR, as implementation does not require a change in the existing law. An example of an article which may lead to misinterpretation itself is Article 95 of the Namibian Constitution which contains principles on state policy on the promotion of the welfare of the people. One of the policies that need to be adopted in terms of Article 95 is the policy aimed at providing free legal aid. If one has regard to the provisions of Article 12 (1) (e) of the Constitution which guarantees the right to a fair trial and to be represented by a legal practitioner of one's choice on the one hand, and the provisions of Article 95 (h) on the other, it may be interpreted as if these provisions are in conflict with each other and that of the Covenant.

138. Namibia has a relatively new Constitution, with few cases reported involving constitutional interpretation. Such cases are handled by the High Court, whose rules of interpretation draw inspiration from the Roman-Dutch legal philosophy largely in use in Southern Africa, resulting from the colonial experience of the area.

III. Part of the report relating to specific rights

Article 6: Level of unemployment in Namibia

139. In order to understand the dynamics of unemployment in Namibia, a definition should be given to guide the Committee in understanding our statistics. Namibia uses the strict and broad definitions of unemployment as follows:

- Strict definition – All those without a job, who are available for work and were actively looking for work;
- Broad definition – All those without a job and available for work, whether they were actively or not actively looking for work.

140. In the Namibia Household Income and Expenditure Survey report of 2004, it was reported that 37% of the total potential labour force was unemployed. Unemployment is higher in rural areas (44.7%) compared to urban areas (29%), is high among young people as compared to old, and is high among people with low levels of education. For instance, the young people in the 15-19 age group are the hardest hit, with an unemployment rate of 64.9%. Also, the majority of the unemployed have no previous work experience at all; simply indicating that unemployment affects those who have never been employed before, the majority of whom are found among the youth and based in rural areas, although it is becoming increasingly common in urban centres as well.

141. The Ministry of Labour and Social Welfare has indicated that the current international statistics guidelines on underemployment have so far been unable to expand the scope of underemployment, and are still limited to visible underemployment. Visible underemployment is defined as "a situation where a person would like to work longer hours but is prevented from doing so by economic reasons". Examples of such economic reasons that prevent people from working longer hours are:

- People who would like to look for additional work but cannot find any; or
- Who would not work because there is a lack of business; or
- Lack of finance or raw materials is another reason why people might not be able to work more hours.

142. In order to come up with underemployment statistics, the Ministry of Labour and Social Welfare used hours of work in their survey as a basis and further looked at availability and preference to work more hours amongst those who worked 35 hours or less per week. The main argument for using 35 hours per week as a limit is that it is close to the working hours of government and private sector employees. Another factor that was included in the assessment of who is underemployed was the reasons for working such hours. The reasons are particularly important because they would reveal whether people still wanted to work more hours or had valid reasons for not working more hours.

143. Labour force survey statistics show that 16.3% (62,798) of all employed persons are underemployed in Namibia. More males (16.9%) as compared to females (15.5%) are reported being underemployed. The survey further revealed that 17,006 (4.4%) of all employed persons work up to 35 hours a week and are actually available to work for more hours. The majority of people working 35 hours per week are employed in the agriculture sector (4,471) and education, possibly teachers (3,097). Analysis of distribution of employed persons available for and preferring to work more hours by employment status revealed that the majority of the people available for and willing to work for more hours are from the public (government and state-owned enterprises) (15,336 employees) and private sectors (31,827). Furthermore, the survey revealed that 37,373 persons were looking for additional work, of whom the majority were in elementary occupations (8,854) and services, shops and market (7,431).

144. The latest report released by the Ministry of Labour in 2010 shows that 37% (strict definition) and 51% (broad definition) of the work force of Namibia is unemployed.

Gender analysis with regard to unemployment

145. A gender analysis of the Namibian labour force reveals that there is a clear-cut gender division of occupation and industry. There are occupations or industries that are predominantly female- or male-dominated. For instance, private households which employ persons employ 11.9 per cent females as compared to less than 2 per cent males. Other sectors that are dominated by females are health and social work, education, hotels and restaurants and manufacturing. All these sectors are dominated by females because the type of work performed there is considered as "female" work. Sectors dominated by males are public administration, defence and security, transport, storage & communications, construction, and mining and quarrying. Another important finding revealed by the survey is that there are more females (5.8%) in unpaid work compared to males (1.2%). Occupational differences show that plant machine operators and assemblers and craft and trade workers are male occupations, whilst clerical work is mostly regarded as within the female domain.

146. Between 2000 and 2004, unemployment nationally increased by 2.9%. This means that Namibia is faced with an increasing problem of unemployment. Unemployment in Namibia is long-term in nature as more than half (56.2%) of the unemployed remain without work for two or more years. Also, people in rural areas tend to be unemployed for much longer, compared to people in urban areas. The Ministry of Labour and Social Welfare has identified the duration of unemployment as one of the main reasons why most of the unemployed persons tend to get discouraged or give up hope of searching for employment.

Levels of youth employment and unemployment

147. The Namibian Labour Force surveys generally do not provide information on employment distribution by age. The only information provided on employment distribution by age is on farm workers in Namibia. This data revealed that in 2003 and 2004, respectively, 32.3% and 30.3% of the people employed on farms were youth. The impact of job losses in the agriculture sector was also felt by youth, as 2% of the jobs lost were among the youth. Youth unemployment has been identified as one of the biggest challenges in the country.

148. The Labour Force Survey of 2004 revealed that average youth unemployment rate stands at 54.4% for the 15-29 age group. The impact of unemployment among youth is reflected in the high percentage of youth who are trying to find alternative employment in the informal economy. A study conducted by the Labour Resource and Research Institute (LaRRI) in 2006 in the informal economy revealed that more than 70% (74.4%) of the people employed in the informal economy are young people aged between 19 to 29 years. The high level of youth unemployment can be attributed to the fact that youth drop out of school or leave school too early, especially in rural areas, with the hope of finding employment, due to high levels of poverty.

149. A comparison of youth unemployment rates from 1997, 2000 and 2004 reveals that there was an increase in youth unemployment between 1997 and 2000. However between the period 2000 and 2004, youth unemployment decreased by 1.8%, while unemployment in the country stands at nearly 40 per cent and primarily affects the black majority.

Labour force participation according to groups and regions

150. According to the NLFS of 2004, the Namibian labour force participation rate at the national level is 47.9%. The labour force participation rate is higher among men (60%) than women (40%). Participation is also high in urban areas as compared to rural areas (34.7%), a fact that can be attributed to the rural/urban migration in search of job opportunities. The labour force participation rate among youth is 42.5 per cent, on average. The Demographic and Health Survey of 2000 revealed that 33 per cent of women between the ages of 15-49 and 49 per cent of men between the ages of 15-59 were employed. However, the percentage was considerably lower among young people aged 15-19, many of whom were without doubt still in school. Only 49 per cent of men and 42 per cent of women who have completed secondary school and higher are employed in professional and technical occupations.

151. The proportion of working was higher among women and men in urban areas than those in rural areas. Employment is also much higher in the south of the country than it is in the northwest and north-eastern regions such as Kunene, Caprivi, Omusati, Kavango and Ohangwena regions.

152. In 2004, 888,348 Namibians were 15 years or older. The survey classified 493,448 people as economically active and 393,880 people as economically inactive. The bulk of those classified as economically inactive were students (41%), followed by "homemakers" (25.3%), retired and old people (25.9%) and those affected by illness and disability (6.9%). The number of economically inactive women (241,237) was significantly higher than the number of men (152,643). The reason that could explain the significant difference is the fact that economic research and policy analysis only focus on the formal sector of employment and ignore other non-wage-earning activities and the informal sector in which the majority of females may be involved. This is reflected in the large numbers of females (53.1%) operating in the informal economy in Namibia as compared to males.

153. In 2002 the Employment Equity Commission reported that out of the total employees of 118,174, women were particularly underrepresented in traditionally male-

dominated sectors such as construction (7%), mining (12.2%) and transport (14%). However, in 2004 they reported that since the implementation of the Affirmative Action (Employment) Act, 83, 5% of disadvantaged persons were appointed in management positions. Women make up 26% in parastatals, and 12% of its senior management level consists of women and at the middle management level women account for 18%. In the public service, women account for 24% who are in senior management and 41% at middle management level.

Government strategy to curb unemployment and steps taken to improve employment

154. The Government encouraged and introduced the following projects to reduce and curb unemployment:

- The National Youth Service;
- Community Conservancies;
- SMEs;
- Aquaculture;
- Green Scheme;
- Community Forests; and
- Community development initiatives (under the Ministry of Gender Equality and Child Welfare).

The right to work and to withhold labour

155. The right to withhold labour is both a constitutional and a statutory right. Namibia has ratified the two ILO conventions against forced labour, namely:

- Forced Labour Convention, 1930 (No. 29), ratified on 15 November 2000; and
- Abolition of Forced Labour Convention, 1957 (No. 105), ratified on 15 November 2004.

156. Article 9 of the Namibian Constitution provides that no person shall be held in slavery or servitude, and no person shall be required to perform forced labour. In order to give effect to the constitutional provision, Parliament passed the Labour Acts of 1992 and 2007 which prohibit forced labour and provide for a penalty of N$ 20,000 or a maximum of four years' imprisonment or both, on conviction.

Restraint and movement of workers

157. There is no legislation that restrains workers in Namibia from moving from one employment or career to another, or from moving and working in other regions or any part of the country.

Legal safeguard to protect workers from unfair dismissal

158. The Labour Act, Act 6 of 1992, laid the foundation for sound labour practices in Namibia. Those workers who are employed are protected by the Act. The Labour Act complies with the provisions of the ILO Conventions and protocols that Namibia has ratified. Workers are represented by trade unions, such as the Namibia Public Workers Union (NAPWU), Namibia National Teachers Union (NANTU), Public Service Union of Namibia (PSUN), and Teachers Union of Namibia (TUN), and many other trade unions.

159. In addition to the above sections 33 and 34 of the Labour Act 11 of 2007 which repealed the 1992 Act protect the workers against unfair dismissal and makes provision for dismissals arising from redundancy.

Technical and vocational training programmes for employment

160. A major challenge for Namibia is to reduce the current high levels of unemployment and underemployment, while pressing ahead with national development. To this end, the Government has promulgated the National Employment Policies of 1997, for job creation and protection of workers, endorsing all the positive elements of policies adopted since independence and new institutions to reduce unemployment and to ensure industrial peace. Emphasis is put on the necessary macroeconomic policies for achieving sustainable high rates of growth of GDP and sectorial prospects for a higher absorption capacity of unemployment entrants in the main sectors of the economy.

161. To achieve the set objectives of the policies, the Government continues to prepare and set in place further measures to boost investment and employment. It is hoped that the policies will be useful instruments as efforts towards full employment and to signal the importance of launching new initiatives to deal with the national unemployment problem and social ills. The policies are also designed with a view to offering ideas that could usefully feed into various initiatives.

162. The Labour Act was enacted to make provision for the regulation of the conditions of employment, to prevent and remedy unfair labour practices, to enhance industrial democracy, and to define the roles and rights of employees, employers and unions, including the role that the Government plays in those relationships.

163. Certain compulsory minimum basic conditions of service for all employees have been laid down without infringing or impairing the right to negotiate conditions of service. These include the improvement of wages and conditions of employment which practices are to be free from discrimination on grounds of sex, race, colour, ethnic origin, religion, creed or social economic status of conditions of employment. The law ensures equal opportunity for women in relation to remuneration and provides for maternity leave and employment security for women.

164. The Government is convinced that the solution to the problem of underdevelopment lies in bold measures of transformation, not in marginal programmes and projects. The Government undertakes to take the lead to transform the legacy of underdevelopment towards inclusive and equitable development. This calls for the State to implement a development agenda.

165. The Government, through the Ministry of Labour and Social Welfare, has established employment offices in ten of the thirteen regions in the country, and plans to establish more in the remaining regions are at advanced stages. These employment offices provide information and services to jobseekers and employers in both the private and public sectors.

Article 7: Wages (nominal and real wages)

166. Namibia does not have a national minimum wage because the Labour Acts of 1992 (now repealed) and of 2007 do not make any provision for that. The law nevertheless makes provision for the setting up of a wage commission whose main responsibility is to advise the minister on issues relating to wages. Thus, wage determination is left to collective bargaining and the discretion of employers. Wages in Namibia are characterised by enormous gaps between the highest and the lowest paid workers. The majority of Namibian workers are mostly unskilled or semi-skilled and earn the lowest wages. Very

few workers in these categories earn reasonable salaries that come as a result of strong trade unions negotiating abilities.

167. However, three industries have introduced minimum wages, namely the agriculture sector, construction, and the security industry. The minimum wage in the agriculture sector has been in implementation since 2003, after an agreement was reached between the Namibia Farm Workers Union (NAFWU), the Namibia Agriculture Union (NAU) and Namibia National Farmers Union (NNFU). The agreed amount was N$ 2-20 (US$ 0-29) per hour plus either food rations or N$ 210-00 (US$ 28-00) per month. A comparison of the minimum wage and the actual incomes earned by farm workers shows that in 2003 and 2004, 18 per cent and 11 per cent of the workers respectively earned below N$ 400-00 (US$ 54-00) per month, which is below the minimum wage and also below the poverty line of N$ 429 (US$ 58-00). Overall, most farm workers earn N$ 1,000-00 (US$ 135-00) and below, with the majority earning between N$ 401 – N$ 600-00, that is about US$ 45 to 70-00).

168. Other information on wages in Namibia is captured in the Actual Wage Rate Database (AWARD), which provides an analysis of minimum wage developments across sectors using wage agreements entered into by trade unions and employers. For the period 2000-2005 the mining and quarrying industry showed the highest nominal minimum wages, while the wholesale and retail trade showed the lowest. Community, social and personal services industry showed the second highest minimum wages during the period under review.

169. Collective bargaining processes between employers and employees are the principal method used for fixing wages in Namibia.

170. As indicated above, the construction industry, agricultural sector and security industry have a system of minimum wages. Every employee in these three sectors of the economy is covered by minimum wages, save where otherwise exempted in terms of the Labour Act. Once employers and employees in a particular industry conclude an agreement on minimum wages, the Minister of Labour & Social Welfare, as a competent authority, causes the minimum wages agreements to be published in the Government Gazette. Those wage earners who fall outside the particular industry or exempted in accordance with the law will not be covered by minimum wages fixed and agreed to by employers and trade unions through a collective bargaining process. So far, no machinery has been set for fixing minimum wages other than through the collective bargaining system.

171. However, there are a number of indicators to standards, goals and benchmarks, for example the economic climate of the country, inflation rates, performance and productivity in the specific industry, etc.

Occupational health and safety of workers

172. The minimum conditions of occupational health and safety are regulated in terms of the Labour Act of 2007 itself. There are also sets of detailed occupational health and safety regulations promulgated in accordance with the Act. The Ministry of Labour & Social Welfare has a well-established and fully functional Division of Occupational Health and Safety which is responsible for enforcement of these regulations. The regulations apply in all areas, but admittedly, there are some difficulties in certain sectors such as agriculture and maritime. Studies are being carried out with a view to developing up-to-date standards and regulations in areas that are lacking.

Employment equity and affirmative action

173. Section 5 (1) (g) of the Labour Act provides for work of equal value and pay for both men and women. The enactment of the Affirmative Action (Employment) Act of

1998, which had been promulgated in terms of the Namibian Constitution, is the actual realization of the principle of equal opportunity for promotion of workers. The legislation favours women, people with disabilities, and previously disadvantaged people (blacks). Employers are obliged to submit to a multipartite Employment Equity Commission plans and reports outlining how they intend to achieve a fair and balanced workforce, and how to implement equal opportunities for promotion, training and recruitment for women, people with disabilities, and historically and racially disadvantaged persons. The Employment Equity Commission is composed of representatives from all these three groups.

174. In addition to the prohibition of discriminatory practices, the Namibian Constitution explicitly permits measures undertaken to promote the advancement of persons disadvantaged by past discriminatory practices. It is in this context that Parliament passed the Affirmative Action (Employment) Act, Act 29 of 1998. This legislation is a serious attempt to bring about equality of opportunity in employment, improving conditions of the previously disadvantaged, and eliminating discrimination.

175. The Affirmative Action (Employment) Act requires that all employers put measures in place and implement them in order to remove all employment barriers such as bias in recruitment, interviewing and testing procedures. The Act requires employers to relax the positive measures such as special training courses, and implement reasonable job accommodation measures to advance in employment by targeting blacks, women and people with disabilities for affirmative action.

176. The Employment Equity Commission (ECC) commissioned an Action Impact Assessment Study in June 2004 to review the progress made towards equity in employment so far. Special attention was paid to changes in workforce profiles with regard to the representation of people from designated groups. The Study also examined the measures taken by relevant employers, the extent of consultations that took place at the various workplaces, the services rendered by the EEC, and the achievements and shortcomings of the Affirmative Action Policy thus far.

177. The Report's findings generally confirmed the slow progress regarding the affirmation of persons in designated groups at most management and supervisory occupational levels across most industrial sectors. White males remain the dominant group at senior management level, although their share of middle management posts declined to below 40%. More significant changes occurred in the specialized/skilled/supervisory job category, where black males increased their share to over 40%. Black women also increased their share in this category but are still substantially underrepresented. The job categories covering skilled, semi-skilled and unskilled workers are dominated by black males, who increased their proportionate share during the period under review. People with disabilities are hardly employed by relevant employers and there are only very few organizations that took concrete steps to accommodate them.

178. Section 5(7) (b) of the Labour Act prohibits sexual harassment of any nature at workplaces. In the public service, sexual harassment is listed in the staff code of conduct as one of the serious offences and if anyone is found guilty, he or she may be dismissed. Furthermore, any resignation on the ground of sexual harassment constitutes constructive dismissal in Namibia.

Working conditions

179. Every employee is granted 24 consecutive annual leave days after an uninterrupted period of service of 12 months. The leave is with full pay. Employees are not allowed to work more than 9 hours a day or more than 45 hours per week, except security guards who can work a 12-hour shift per day or 60 hours per week. Public holidays are not working days but are paid public holidays.

180. The conditions of employment mentioned above, with few exceptions apply to members of the uniformed forces due to the nature of their work.

181. It is government policy that all the employers in the country should have a HIV/AIDS and wellness programme to balance their professional and family life.

Article 8: Right to form trade unions

182. Namibia is a party to the International Covenant on Civil and Political Rights as well as to ILO Conventions No. 87 of 1948 (on Freedom of Association and protection of the Right to Organize) and No. 98 of 1949 (on Right to Organize and Collective Bargaining). Namibia is not a party to ILO Convention No. 151 of 1978 (on Labour Relations).

183. Sections 53 and 54 of the Labour Act of 2007 make provision and set requirements for the establishment of trade unions in Namibia, except for members of the Namibian Defence and Police Forces. The provisions have been practically applied in Namibia, and as a result, a total of 47 trade unions and 3 federations have been registered since 1992. Trade unions represent a total number of approximately 450,000 employees in both the public and private sectors.

184. The Labour Act allows trade unions to form federations and to join international trade union organizations of their own choice without any legal or practical restrictions whatsoever. The only restrictions placed on the functioning of trade unions are those in sections 53(3) of the Labour Act. However, if a trade union chooses not to be legally registered there are no consequences except that such a union is not recognized by law and hence does not enjoy trade union privileges and rights (e.g. consultation on relevant issues and state funding to attend international meetings).

185. The Labour Act has put in place measures to promote free collective bargaining principles and processes at the enterprise, industrial and national levels. Many trade unions have concluded and entered Procedural and Recognition Agreements with different employers on labour and employment issues. Also the statutory tripartite Labour Advisory Council has taken similar approaches. In Namibia there are 47 registered trade unions of which 14 are dormant and 3 trade union federations. Their memberships are cross-sectorial, industrial and sometimes trade based. Members of the administration of the State have equal rights to form and belong to trade unions of their choice. They can also strike, like employees in the other sectors.

Right to strike or lockout

186. By the terms of section 47 of the Labour Act, 2007 every party to a dispute has a right to strike or lockout if the labour dispute remains unresolved after the reconciliation meeting. Before a trade union embarks on industrial action, it must have taken all the necessary and reasonable steps to resolve the issue(s) in dispute with the employer through negotiations. All the legal and procedural requirements of dispute resolution mechanisms must have been fulfilled, in other words reporting of the dispute and the setting up of a Conciliation Board at the Labour Commissioner. The dispute must be declared unresolvable, hence deadlocked, by the Conciliation Board. The trade union should then issue a 48-hour notice of intention to withhold labour to the employer concerned, with a copy of such notice being served on the Labour Commissioner.

187. All categories of employees have the right to withhold labour, with the exception of those in essential services and the Defence and Police Forces. The previous and the current Labour Acts do not define essential services; the Labour Court may declare essential services on the application made by the Minister of Labour and Social Welfare.

188. Section 2(2)(a) of the Labour Act of 2007 exempts the Members of the uniformed Forces from all the provisions of the Act, except those which deal with discrimination, harassment and victimization in employment. Thus, they cannot withhold their labour or go on strike.

189. Article 95 (d) of the Namibian Constitution encourages the State to promote membership of the International Labour Organization (ILO) and, where possible, adherence to and action in accordance with the international conventions and recommendations of the ILO.

ILO conventions ratified by Namibia

190. The following ILO core conventions have been ratified by Namibia:

- Forced Labour Convention, 1930 (No. 29), ratified on 15 November 2000;
- Abolition of Forced Labour Convention, 1957 (No. 105), ratified on 15 November 2004;
- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), ratified on 3 January 1995;
- Right to Organize and Collective Bargaining Convention, 1949 (No. 8) ratified by Namibia on 3 January 1995;
- Minimum Age Convention, 1973 (No. 138), ratified on 15 November 2000;
- Worst Forms of Child Labour, 1999 (No. 182), ratified on 15 November 2000;
- Equal Remuneration Convention, 1951 (No. 100), ratified on 6 April 2010;
- Discrimination (Employment and Occupation), Convention, 1958 (No. 111), ratified on 13 November 2001.

Other conventions

- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified on 3 January 1995.
- Labour Administration Convention, 1978 (No. 150), ratified on 28 June 1996.
- Termination of Employment Convention, 1982 (No. 158), ratified on 28 June 1996.

191. In light of the above ratifications and the constitutional provisions, it is a clear testimony that trade unions in Namibia have the right to join international labour organizations and federations of their choice.

192. Individuals are free to join trade unions of their choice as it is a constitutional fundamental freedom in terms of Article 21 of the Namibian Constitution. There are no restrictions or conditions in terms of the law of Namibia before individual workers can join or form trade unions. However, in terms of the Labour Act there are requirements that individuals must meet in order for their union to be recognized as a trade union. The Labour Act also applies to public sector employees.

193. The right to strike can only be restricted if the employees perform essential services. The Labour Act does not define essential services but the employers have the right to apply to the Minister to classify such services as essential.

Article 9: Social security and social insurance

194. Social security is an integral part of the Government's efforts to promote the welfare of the people. Two pieces of legislation govern the social security scheme; the Workmen's Compensation Act No. 30 of 1941, as amended, and the Social Security Act No. 34 of 1994. The amendment of the Workmen's Compensation Act calls for the establishment of an Accident Fund and Accident Pension Fund and provides the framework for insuring employees against loss of earnings resulting from employment injuries and diseases contracted in the course of employment.

195. The Social Security Act provides for the establishment, constitution, powers, duties and functions of the Social Security Commission and provision for the payment of maternity, sick leave and death benefits. The Act requires that all the employers and employees should be registered with the Social Security Commission and must contribute monthly to the Fund. In 2000, from an estimated 400,000 employees in Namibia, a total of 292,555 were registered with the Social Security Commission as members, and 18,936 certificates were issued to employers.

196. Since 1994, Namibia has had a well-functioning social security coverage applicable to contributing workers. Following the enactment of the Social Security Act No. 34 of 1994, the Social Security Commission (SSC) has successfully built capacity to run its Maternity Leave, Sick Leave and Death Benefit Fund (MSD Fund) and the Accident Fund (AF).

197. The MSD Fund prescribes five types of benefits, viz. maternity, sickness, death, disability and retirement, while the Accident Fund provides for the payment of compensation and reasonable medical expenses in respect of work-related injuries or industrial diseases contracted by employees in the course of their employment.

The MSD Fund

198. Following the Labour Ministry's promulgation of regulations on 1 November 1995, the Social Security Commission commenced registering employees during January 1996. The first MSD benefit was paid in June 1996.

199. The scheme presently covers all persons between the ages of 16 and 65. It defines an employee as an individual, other than an independent contractor, who works for another person and who receives, or is entitled to receive, remuneration for that work; or in any manner assists in carrying on or conducting the business of an employer in Namibia. Self-employed workers may voluntarily register as MSD Fund members.

200. The Fund is financed by contributions of 1.8% of the employee's insurable remuneration, of which the employee pays 0.9% and the employer also pays 0.9%. Self-employed persons pay both shares, which is a total of 1.8%. Contributions are levied on earnings up to a ceiling of N$ 6,000.00 per month (US$ 70-00). Workers with earnings below N$ 300.00 (US$ 35-00) per month are deemed to have earned N$ 300.00 for the purposes of making contributions and calculating benefits. Regulations stipulate that insurable remuneration excludes bonuses, allowances, and subsidies, reimbursements for expenses, retirement benefits, and compensation for overtime.

201. The Fund provides a maternity leave benefit, sick leave benefit and death benefit. To qualify for these, an insured person must have been a member of the Fund for a continuous period of six months before the date of the claim and have paid the required contribution in full.

202. Maternity benefits are payable to female members for a period of four weeks before the expected date of the birth of a child and eight weeks after the actual date of birth. The

benefit is equal to 100% of the employee's insured remuneration or a maximum of N$ 9,000-00 (US$ 1,058).

203. Sick leave benefits are payable to members of the Fund who were incapable of working for at least 30 consecutive days. The benefit is calculated by taking into account the number of days during which the member was absent from work because of incapacity which exceed the sick leave provided in section 24 of the Labour Act. The benefit is payable for a maximum of two consecutive years. It amounts to 75% of the employee's covered remuneration for the first twelve months and 65% for a further twelve months.

204. A death benefit is payable to a dependent of a deceased member who satisfied both the member and contribution requirements. However, if a member retires or becomes permanently invalid, he/she may claim the full amount of the death benefit and no further such benefit will be paid at death. A lump sum of N$ 5,000 (US$ 588-00) is payable for this benefit.

Accident Fund

205. *Membership* - Every employer who conducts business in Namibia must register with the Social Security Commission and pay annual assessments to the Accident Fund. Employees covered include all those who have entered into work under a contract of service or apprenticeship with an employer, including domestic employees employed as such in a private household. Among the persons excluded from the scope of the Act are:

- Persons earning more than N$ 72,000.00 (US$ 8,470-00) per annum;
- A person who contracts for the carrying of work and he engages other persons to perform such work and persons who work solely for a commission or a share in the takings;
- Persons earning more than N$ 72,000 (US$ 8,470-00) per annum, may however be brought within the scope of the Act by a special arrangement entered into between the employer and the Commission.

206. The assessments that employers must pay to the Accident Fund are based on their annual insurable wage bill. Insurable wages include any payment in money or in kind or both in money and in kind, made or owing to an employee and shall include commission, cost of living allowance, the value of free food and quarters supplied by the employer free of charge, and incentives or other bonuses of a regular nature, but shall exclude payments for overtime, travelling and subsistence allowance or other payments of a reimbursing nature and casual ex-gratia payments up to a ceiling of N$ 60,000 (US$ 7,058-00) per annum per employee. Assessments are calculated according to rates which vary according to the activity of the employer and the associated risk of injury or disease.

Benefits

207. Benefits are payable to an employee who is incapable of working due to an on-the-job accident or a scheduled disease developing in the course of employment. The following benefits are provided:

- *Temporary disability* – For each day so long as inability to work continues, but not exceeding 12 months, unless active medical treatment is still required for a longer period, compensation is payable to an injured employee at the rate of 75% of his or her insurable salary. However, no compensation is payable for the first three days of disability which lasts less than 14 days.
- *Permanent disability* – For employees who suffer a loss of function or anatomical defect due to an employment-related accident or disease, the extent of the disability

is assessed as a percentage; and a corresponding fraction of the payment for full disability is calculated. If the degree of permanent disability is 30% or less, compensation takes the form of a lump sum. For 30% disability, the benefit is equal to 15 times the employee's monthly earnings up to N$ 3,000. When disability is less than 30%, the lump sum is calculated proportionately. If the degree of disability is greater than 30%, compensation takes the form of a pension. An assessment of 100% or total disability results in a pension of 75% of the worker's insured monthly salary. For degrees of disability less than 100%, the pension is proportional to that for total disability.

- *Survivors' benefit* – Survivors' benefits are payable to the dependents (spouses and children) of a person who dies as a result of an employment-related injury or disease. This comprises a lump sum of N$ 3,750 or two months' earnings whichever is the lesser, and a pension calculated as a portion of what the worker would have received if the worker was totally and permanently (100%) disabled. The rates of the survivor's pension are 40% for spouses and 20% for each surviving child under 18 years of age up to the amount to which the deceased worker would have been entitled if the worker was totally and permanently (100%) disabled.
- *Funeral grant* – An amount of N$ 3,120-00 (US$ 367-00) may be refunded for expenses incurred in the burial of a deceased member.
- *Other benefits* – All reasonable medical and transport expenses incurred by or on behalf of the injured employee are reimbursed by the Accident Fund at prescribed rates.

Old Age Pension Grant

208. Namibia is one of the few countries in Africa that provides an Old Age Pension paid every month by the State. This grant is an important source of income for senior citizens and for poor households. In fact, some households depend on these pensions. Before independence, pension levels were determined by ethnic criteria in terms of the Social Pensions Act, 1973 (Act 37 of 1973) inherited from South Africa. The pension amount ranged from a high of N$ 382,00 (US$ 44,90) per month for whites to a low of N$ 55-00 (US$ 6,47) per month for blacks in the Ovambo (as it was then known), Kavango and Caprivi regions. The Government addressed these imbalances by maintaining the highest pension while progressively increasing the lower amounts. However, all pension payments were subsequently equalized to N$ 370,00 (US$ 43,53) and the pension was raised to N$ 450,00 (US$ 52,94) per month during the 2008/2009 and again was increased to N$ 500,00 (US$ 58,82) in 2010/2011 financial year. This amount was further increased to N$ 550,00 (US$ 64,70) during the 2012/2013 financial year. The Social Assistance Database of 2007/2009 shows that payment is being made to 145,666 beneficiaries (of whom 126,919 are elderly and 18,747 are people living with disabilities) under the ongoing Government programme. In addition, about 1,800 war veterans receive N$ 500-00 (US$ 58,82) per month. A funeral benefit in the amount of N$ 2,500-00 (US$ 294,11) is paid in respect of each deceased elderly person.

209. The Government is in the process of reviewing the social security set-up to ensure that all the necessary components of social welfare are catered for, and that the contributions and benefit structures (including the benefits secured through the Social Security Commission) are adequate to secure maximum benefits with minimum contribution. A workable National Pension Fund covering the entire population is being considered to be put in place in the near future.

Other benefits

210. All reasonable medical and transport expenses incurred by or on behalf of an injured employee are reimbursed by the Accident Fund at prescribed rates. The current income to the Funds is in the region of N$ 90 million (US$ 10,588,235) per annum.

211. In Namibia, the formal (public) social security schemes described above are supplemented by private arrangements. It is envisaged that the administration of some of the activities of the future funds e.g. National Pension, Medical and National Development Funds will be outsourced. Therefore, private arrangements will be further strengthened in future.

212. There are few groups that do not enjoy the right to social security at all in Namibia. These are for the employees working for less than three days per week for the same employer, and the few self-employed persons are excluded since the majority are not registered, as the law does not compel them to register with the SSC.

213. The introduction of income replacement schemes has resulted in workers and their families having greater economic and psychological security, and hence greater social stability. For this reason, the government has taken a stand to expand the coverage of social security to all the working groups. The following funds are to be launched in the very near future:

- **Medical care (scheme)**: The provision of medical care including prevention measures to improve the health of workers and their families. No timetable for implementing the Medical Aid Fund has been agreed to yet.
- **Retirement pension Fund**: The provision of a retirement Pension Fund means that a worker no longer needs a large family to ensure support in old age. Consequently, the fertility rate will gradually decline. The Pension Fund will be introduced in the future as soon as its policy and design have been agreed upon by the stakeholders. Consultations hereon are ongoing.
- **Development Fund**: The provision of the Development Fund will cater for training and employment schemes for socioeconomically disadvantaged persons.

214. Workers sometimes claim that social security contributions place an unfair burden on low-income earners and may create or worsen poverty among them. It is claimed that in domestic markets, contributions raise production costs and reduce profitability and thus encourage employers to seek more capital-intensive methods, which inevitably leads to reduced levels of employment.

215. There are pension schemes for all the employees who are permanently employed both in public and private sectors during their retirement or whenever they are no longer employed. In terms of the Pension Funds Act, Act No. 24 of the 1956, all the Pension Funds in the country must be registered, and be supervised by the Namibia Financial Institutional Supervisory Authority (NAMFISA), which is a Government institution.

Article 10: Family law

216. Namibia submitted information on both the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child to the relevant UN committees during 2004 and 2009, respectively.

Definition of family

217. Article 14 of the Namibian Constitution states that:

> "Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

218. In addition to the constitutional provision, the common law on divorce makes it difficult to institute divorce actions on grounds other than those grounds recognized in the Act. In Namibia marriages are solemnized by a marriage officer in the magistrate's court and by a pastor or priest of various churches, but in order to protect the family, divorce can only be instituted and be granted by the High Court.

219. As stated under Article 16 of Namibia's first country report under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in Namibia the concept of "family" goes far beyond the nuclear family to include grandparents, aunts, uncles, cousins and other extended family members.

Measures in place protecting the family

220. The Government encourages that, where possible, married persons are not deployed far from their family homes. In addition to the constitutional provision, the institution of marriage and preservation of the family is protected by the fact that the Divorce Act makes it difficult to dissolve a marriage, by restricting the grounds for divorce. Services of social and family counselling are available and are provided by Government social workers at hospitals across the country. Some religions do not allow married couple to divorce. Traditional marriages usually do not just break up without the consent of the parents and the elders of the couple.

221. The Maintenance Act, Act No. 9 of 2003, places a legal duty on parents to maintain their children. The Act also applies to all persons who have a legal duty to maintain another person, regardless of the nature of the relationship.

222. The MVA Fund Act, Act No. 10 of 2007, which replaced the old Acts of 1991 and 2001, redefines the purpose of the Fund from a fault-based system in which negligence had to be proven before a claimant could get compensated, to a "no fault" based system where the focus has shifted to a system geared towards providing a social security safety net for those who may unfortunately be involved in motor vehicle accidents.

223. The Government Institution Pension Fund (GIPF) was created to manage and pay out pension and other benefits of public service employees. The rules of the Fund require that every employee should nominate his or dependant(s) as beneficiaries in case of his or her death.

224. Article 12 (1) (f) of the Namibian Constitution protects individuals from being compelled to give testimony in a court of law against themselves or their spouses.

225. The Criminal Procedure Act, Act No. 51 of 1977, also protects spouses from testifying in criminal cases against their spouses.

Consent to marriage

226. Namibia has slightly over 28% of its population aged 15 years and above who are either married under civil or traditional laws. Only 19% are married under the civil laws.

The never married persons' population forms the highest proportion, which is 56%. On the other hand, 7% of the population is made up of couples in consensual unions, in other words, they consider themselves married but have not formalized the union either legally or traditionally. The proportion of the widowed and divorced/separated population is close to 7%. However, there are relatively more widowed and divorced or separated for both females and males.

227. Article 14 of the Namibian Constitution provides further that marriage shall be entered into only with the free and full consent of the intending spouses and between a man and woman of full age without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status.

228. Civil marriages in Namibia are regulated by the Married Persons Equality Act, Act 1 of 1996. Both men and women of 18 years and older, have the right and are allowed by law to marry and found a family. The most important aspect of the Act is the abolishment of the common law rule, that husbands have marital power over their wives. The effect of the changes was that married women became fully emancipated; they have the rights to enter into contractual agreements, own property, act as directors of companies and bind themselves as surety without the consent of their husbands.

229. Customary laws do not set a minimum age for marriage, but marriage generally does not take place before puberty, or before the attainment of an acceptable level of social maturity. Family consent is required for a marriage to proceed, but lately (in most communities) the consent of both the intending spouses is necessary as well. A customary law marriage involves a series of negotiations between two groups and creates rights and responsibilities between all family members. The LRDC has drafted a piece of legislation on recognition of customary law marriages, which is still pending for public and stakeholders' consultation.

230. As stated in the CEDAW report, for both women and men in Namibia the restrictions to enter freely into marriage is qualified by a lack of information about the legal consequences of marriage.

Protection of mothers before and after childbirth

231. Social security maternity leave and benefits are payable to female workers in terms of the Labour Act of 2007. Maternity benefits are payable to female members for a period of four weeks before the expected date of the birth of a child and eight weeks after the actual date of birth. The benefit is equal to 80% of the employee's insured remuneration or a maximum of N$ 9,000.00 (US$ 1,058.82).

232. Health-care facilities to cater specifically for pregnant mothers for antenatal classes have been set up across the country. Further to that, shelter is also provided in some regions to cater for pregnant mothers-to-be near the health facilities for delivery.

233. On an informal basis, family members in the community normally assist mothers giving birth by providing food, clothing and even looking after her children until their mother has fully recovered. All women are covered under the public health facilities and shelter is only available free of charge to those women in very remote rural areas. There is no provision for paternity leave in Namibian law.

234. Protection of children and young persons from economic and social exploitation and penal measures were covered in the 1st, 2nd and 3rd periodic reports of the CRC of 2009.

Protection of elderly persons

235. There is no law in place that specifically protects the elderly. The Constitution protects all persons living in Namibia. However, there are policies under which the Government provides social grants to the elderly, as discussed above.

Asylum seekers

236. Namibia has ratified the Convention relating to the Status of Refugees of 1951 as well as the Protocol relating to the Status of Refugees of 1967. Parliament passed the Refugee (Recognition and Control) Act of 1999 to give effect to these international instruments. This Act provides for the granting of asylum or refugee status and the Government has established a system for providing protection to refugees. The Government reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement on considerations of national security. In practice, the Government provides protection to refugees against expulsion or return to countries where their lives or freedom would be threatened.

237. The children of the refugees are allowed to attend schools of their choice. Professionals may be employed in Government institutions depending on their qualifications. Family reunification only takes place on voluntary basis when refugees are repatriated of their free will.

Human trafficking

238. Namibia ratified the 2003 United Nations Convention against Transnational Organized Crime and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2003. Subsequently, as a result of the above, Parliament enacted the Prevention of the Organized Crime Act, No of 2004 which criminalized human trafficking.

239. In April 2009, the Ministry of Gender Equality and Child Welfare, in collaboration of the Ministry of Agriculture, Water and Forestry, conducted an assessment regarding trafficking of persons in Namibia. The assessment indicates that there is only a small number of human trafficking identified or reported.

240. A case of a mother in the coastal town of Walvis Bay who was using her teenage daughter living in the north for sexual exploitation through forced prostitution was reported, as well as that of a Zambian national trafficking Zambian boy into Namibia for farm work exploitation. These cases were reported to the police and the suspects were arrested.

241. A total of 102 police officers from NAMPOL's Women and Child Protection Units in the Namibian police and 25 social workers from the Ministry of Health and Social Services received special training. There is no formal witness protection programme in Namibia regarding human trafficking, but they are protected under other legislation in the criminal justice system, notably the Criminal Procedure Act No. 51 of 1977.

Article 11: Right to housing and adequate food

Housing

242. As Namibia's population growth rate is approximately 3% annually, providing sufficient housing is one of the country's most pressing challenges. Through the National Housing Policy, the Government recognizes shelter as a fundamental right. The objective of the policy is to create the necessary conditions for every Namibian to achieve housing provision according to their needs, priorities and affordability. However, the policy also clearly states that the responsibility to shelter the family remains with the particular head of

the household. The Ministry of Regional & Local Government, Housing & Rural Development, the National Housing Enterprise (NHE) and the private sector enable communities and individuals to house themselves by giving them access to loans, serviced land and such advice and support as they may need to acquire or erect an affordable shelter of an acceptable standard.

243. There are three main types of dwelling in Namibia: traditional, detached and semi-detached houses. About 44 per cent of the population lives in a traditional dwelling, this makes it the most common form of dwelling in Namibia. In the northern part of the country, such as in the regions of Ohangwena, Omusati, Kavango and Caprivi, a majority of more than 80% of the households lives in traditional dwellings.

244. Wood, grass, cow dung, corrugated iron or zinc, cement and bricks are the materials used for the construction of dwellings in Namibia. In urban areas 82% of the dwellings have roofs with corrugated iron or zinc and 36%, and roofs made of wood, grass and cow dung are more prevalent in rural areas with about 80% of all the roofs. The regions with the highest proportion of dwellings with corrugated or zinc roofs are Otjozondjupa, Hardap and Khomas, all with 96%. However, concrete is mostly used for the floor in Namibia representing 48%, and 36% have sand and 15% have mud, clay and/or cow dung, respectively. The regions where the highest proportion of dwellings with floors made of concrete are Erongo and Khomas, both with 78%.

Ownership and type of tenure

245. About 76% of the households in Namibia own their dwelling, among them 65% without mortgage and 12% with mortgage. Eleven per cent occupies their dwellings for free and about 12% rent their dwellings. The regions with the highest proportion of ownership with no mortgage are Omusati and Kavango, both with 92% because it is mostly traditional dwellings. The regions of Khomas, Erongo, and Otjozondjupa have the highest proportion of ownership with mortgages.

246. Namibia at independence identified housing as one of priority areas of development. Based on that notion, a National Housing Policy was formulated and was approved by the Cabinet in July 1991. One of the policy objectives was to promote partnership between public and private sector in order to ensure efficient, effective, adequate, affordable housing provision for all Namibian citizens. A National Strategy was developed that gave birth to a National Housing Programme, "Build Together". The Programme provides access to finance to low and low ultra-income people to acquire housing.

247. The National Housing Enterprise (NHE), a parastatal, was established in 1993 by an Act of Parliament to provide and finance affordable housing to low and middle-income people with minimum income ranging from N$ 85,000-00 to N$ 500,000-00 (US$ 10,000 to US$ 58,823-00.

248. The private sector (financial institutions/banks) provides mortgage finance through estate developers for middle- and higher-income people.

249. The Build Together Housing Programme is heavily subsidized by Government, with fixed interest rates of between 4 to 7%. The maximum housing loan is N$ 40,000-00 (approximately US$ 4,750.00) repayable over a period of 20 years.

250. The Government introduced 100% housing schemes for its employees, while the private sector provides housing subsidies to their employees, as well.

251. The Government has acquired patent rights for an Easy Build Mould. The Mould is designed with a simple technology to be used by everyone with little expert and guidance during construction. The structure is plastered at the same time as construction takes place. As a result, it will eliminate costs relating to the use of qualified bricklayers, and other

related costs. The construction of houses with clay has been introduced by private consultants with support from Government.

Accessibility of housing

252. The Government, through the Build Together Social Housing Subprogramme, facilitates housing provision for welfare cases including the disadvantaged on an economically sustainable basis through a cross-subsidization system. The houses are rented out to welfare cases at a very low interest rate while renting to non-welfare cases at market-related interest rates to subsidize it. The Government also provides financial support of N$ 1 million (US$ 117,647-00) annually to the Shack Dwellers Federation of Namibia, a community savings group, as a recognition and encouragement for their efforts in the provision of housing for the poor.

253. In 2008 alone, about 422 houses were constructed countrywide, with all basic housing resources such water, sewerage, electricity and roads.

The laws and the national plan and policy on housing

254. The following documents and laws set out the Government's national plan and policy on housing:

- The Namibian Constitution;
- Vision 2030;
- Third National Development Plan;
- National Housing Policy of 1991;
- National Housing Development Act, Act No. 28 of 2000;
- Regional Councils Act, Act No. 22 of 1992;
- Local Authorities Act, Act No. 23 of 1992;
- Decentralization Policy of 1998;
- Decentralization Enabling Act, Act No. 33 of 2000;
- Build Together Implementation Guidelines and Procedures 2007, revised edition.

255. The goal of the National Housing Policy is "to make resources available for the development of infrastructure and facilities so that every Namibian family will be given a fair opportunity to acquire land with water, energy and waste disposal system, and to facilitate access to shelter in suitable locations at costs and standards which are affordable to the family on the one hand and to the nation on the other hand". Evictions as a last resort are taking place at local authority levels in accordance with the necessary legal framework.

Agriculture

256. Namibia has dual agricultural farming systems; the communal farming sector (mainly for subsistence farmers) with about 41% of agricultural arable land, and the commercial sector which occupies about 48% of the agriculturally usable land. In the year 2005 it was estimated that about 4,000 families on these commercial farms employed 70,000 families. The primary significance of the agricultural sector lies in its contribution to the livelihood of rural communities. About 70% of the population is directly or indirectly dependent on small-scale agriculture, either as communal farmers or farm labourers.

257. Namibia's climate is marginally suited to dry-land crop production, with the exception of areas in the north and north-eastern regions of the country. Irrigation is

possible only along the perennial rivers on the northern and southern borders and where dams feed irrigation schemes. Although substantial production in staple food takes place, Namibia is still dependent on food imports mainly from neighboring South Africa to address its food insecurity.

258. The country is semi-arid to arid with a highly erratic rainfall, with the average rainfall ranging from over 700 mm in the northeast to less than 25 mm in the southwest and west of the country. Most rain occurs in the summer months from November to April.

Right to adequate food

259. Land is an important resource in agricultural production. It has a mixture of political, social, economic and environmental objectives, all of which are important for development. The Government has strengthened and enforced the policy of land reform based on willing seller and willing buyer and has facilitated access to credit for many disadvantaged groups. A larger amount of financial resources has been allocated to land reform programme, which facilitated the establishment of 12 regional land boards and the resettlement of 295 destitute and landless families.

260. The Government adopted a National Land Policy during April 1998. The policy highlights the need to secure the participation of women in agricultural development and recognized women as farmers in their own right. The Government established a Land Acquisition and Development Fund in 2004 and acquired an additional 828,265 hectares from 113 commercial farmers. The development of communal areas into small-scale commercial farms was promoted and 563 farms were surveyed in the communal areas.

261. Save to say that Namibia's economy depends primarily on agriculture; it supports the majority of the population. The dual structure of the sector explains why some 6,500 commercial farms of around 7,000 to 10,000 hectares each cover an area of about 44% of the country, the majority of which is owned by white Namibians who carry out intensive farming in both crops and animals. In 2005, the commercial subsector contributed about 65% of the agricultural output of Namibia. The mainstay of the agricultural sector is cattle and sheep, while maize, wheat and millet (locally known as *mahangu*) are grown in the northern part of the country where there is high rainfall. The livestock population of Namibia is about 2.5 million cattle, 2.4 million sheep and 1.8 million goats. Cattle farming is concentrated in the central and northern parts of the country, while the southern parts of the country are suitable for sheep and goat farming.

262. In 1998, the agriculture sector contributed about 8% to the GDP and merchandise exports respectively, accounting for 25% employment of the labour force. During the year 2000 a growth of 4.3% was recorded, and during 2001 the sector recorded a decline of 11.4%; the negative growth rate was attributed to the constant number of livestock in 2001 as compared to 2000 when the increase was substantial. In 2005 agriculture's contribution to GDP was 10%, of which 88% came from livestock production.

263. The sector's performance is mainly determined by climatic conditions. Droughts impact substantially on the sector's output and result in negative growth rates. White maize is produced mainly under dry-land conditions. A total of over 7,000 hectares of white maize is planted every year in the commercial dry-land production areas. The most important irrigation schemes contributing to domestic white maize production are the Hardap irrigation project and the Naute project in the south, and the Etunda, Musese, Ndonga Linena, Shitemo and Shadikongoro irrigation projects in the north and northeast of the country.

264. In recent years, more farmers have ventured into planting more drought-resistant products, such as tobacco and cotton instead of maize, but still on a small scale. Namibia has also started successfully to exploit the competitive advantage in grape production

alongside the Orange River in the south of the country. From 32 hectares at independence in 1990, the land under cultivation for grape production grew tremendously to 1,028 hectares in 1999.

265. Namibia is secured of food at the national level in terms of cereal output through local production and imports. However, the problem of food insecurity is mainly at the household level, where a significant number of households have no access to food due to lack of income, since most foodstuffs are purchased from retailers.

266. Agribank is the leading agricultural and rural financing institution in Namibia, supporting the agricultural industry by promoting and financing sustainable development in the sector. The bank has a mandate through the Act, the Agricultural Bank of Namibia Act No. 5 of 2003 to provide financial resources for the promotion and development of agriculture and activities related to the industry. Agribank lends money to disadvantaged groups at a reduced interest rate to buy farms and develop agricultural land.

267. Most of the country's primary resources are exported, while almost all of its consumer goods are imported. There is particular scope for investment in manufacturing for both local and international markets. The Government is aware and is very much concerned that Namibians consume what they do not produce and produce what they do not consume. Therefore, there is recognition of the need for Namibia as a country to position her to reap the fruits of integration, and invest where there is the best chance of becoming competitive and adding value to the country's raw materials.

268. The NHIES of 2003/2004 reported that almost 50% of households own poultry, 39% own goats and 31% own cattle. Small percentages of the households own other animals such as donkeys, mules, pigs, sheep, horses and ostriches. The proportions of households owning or having access to both animals and land are reported to be higher in rural areas than in urban areas.

269. In general, the elders, men, women and children all eat the same food in their households, depending on whether the family can afford the cost of the foodstuffs.

Poverty alleviation

270. Quantitative information on non-monetary dimensions of poverty and its causes was obtained from the Participatory Poverty Assessment (PPAs) conducted during 2003-2006. The findings of the PPAs show that HIV/AIDS, unemployment, lack of inadequate access to social services and their poor quality, lack of or inadequate assets such as livestock and land (including poor soil) and poor road infrastructure were the major problems experienced in the regions.

271. The Namibian Government is extremely concerned about poverty and the high unemployment rate in the country. To address this problem, the Cabinet adopted the National Poverty Alleviation Strategy Policy during the Cabinet Retreat on Economic Growth and Sustainable Development held in 2005. As a result, the Government has introduced special incentives for manufacturers and exporters through the Ministry of Trade and Industry, encouraging companies to establish new manufacturing ventures in the country or to relocate an existing operation in order to provide jobs and to stimulate economic growth in the country to alleviate poverty. Other incentives are the establishment of export processing zones (EPZs). The enterprises that undertake manufacturing, assembly, repackaging and break-bulk operations, and gear all or almost all of their production for export, will be eligible for both tax and non-tax benefits, and the company is to be allowed to hold a foreign currency account in local banks.

272. Furthermore, the Government created a Small Business Credited Guarantee Trust through the Ministry of Trade and Industry to assist small entrepreneurs countrywide to

obtain commercial loans from financial institutions. The Trust has signed a memorandum of agreement with five commercial banks. Under these agreements, the participating institutions undertake to grant loans to small business entrepreneurs, while the Trust undertakes to guarantee up to 80% of the principal loan amount. The aim is to promote the small enterprise sector by enabling entrepreneurs in the sector to overcome the security (collateral) obstacles related to accessibility of commercial loans, both for existing small operators and new entrants in the sector.

273. During March 2008, a Namibia Relief Fund was founded by a number of private sector companies, in the wake of floods that particularly affected northern Namibia. This will be an ongoing Fund, fully endorsed by the Government to respond to the needs in the community.

274. The combination of conservation and business opportunities is a driving force in poverty reduction and enhancement of rural livelihood. To this end, the Government in 2004 established the Community Forestry Programme targeting forest, woodland and savannah areas owned by local communities. The premise of the programme is that local people should manage their community forests sustainably and they would in turn receive the right to manage and market forest products and other natural resources to generate income. The project is supported and funded by the Ministry of Environment and Tourism as well as two German development agencies, namely the German Development Bank and German Development Services.

275. Namibia has gained a positive reputation for its innovative approaches linking conservation to poverty alleviation through its Community Based Natural Resources Management Programme promoting communal area conservancies and pro-poor tourism initiatives. For many rural communities, tourism is the only large-scale economic opportunity that offers real potential. The Government, through a dynamic partnership with the communities, the private sector and NGOs, has promoted and supported the establishment of communal conservancies which form the basis for the Namibian Community Based Resource Management Programme to enhance rural livelihoods and poverty alleviation.

276. In 2007, the Policy on tourism and wildlife concessions on State Land was approved by Cabinet to create opportunities for business development and economic empowerment of the formerly disadvantaged communities through access to tourism, hunting and industries based on wild plant and animal resources. The rural communities that are neighbouring the national parks or in some cases are resident in the parks are given preference to get concessions in Government proclaimed protected controlled parks. The concessions will contribute to economic growth, employment creation, rural development, the alleviation of poverty, and addressing social inequities. In order to advance and to encourage the communities to exploit the tourism potential, the Government has established a fund in the Ministry of Environment and Tourism to give financial assistance in the form of grants to community-based tourism projects to develop financially sustainable tourism enterprises in both rural and urban areas.

277. The agricultural sector plays an important role in the socioeconomic development of Namibia. The Government established the Agricultural Bank of Namibia (AgriBank) to finance agricultural and rural development to support economic growth and successful land reform programme through loan schemes. In 2007, the Government amended the Agricultural Bank of Namibia Act, Act 5 of 2003, to expand the business operations of the Bank to include ecotourism, game farming and hunting, aquaculture, primary processing of plant and animal products, forestry, insect raising and control and processing, storage and transportation for agricultural purposes.

278. The Government is fully aware that the current land reform programme is clearly not working to address the poverty problem, because farming in Namibia (especially at the commercial level) needs expertise and is a very expensive exercise.

279. The Government has also introduced community-based freshwater aquaculture in eight regions and is encouraging the communities living along the perennial rivers and dams to establish more of these projects and to approach the Ministry of Fisheries and Marine Resources for assistance to reduce poverty, improve food security and create employment for them. The Government has an Inland Aquaculture Centre, whose objectives are training, breeding and production of fingerlings for distribution to community-based freshwater aquaculture. The main species for freshwater aquaculture include three-spot tilapia and African sharptooth catfish. The ministry has also established Kamutjonga Inland Fisheries Institute, which serves as inland aquaculture training and research centre.

Access to drinking water

280. Namibia is a water-stressed country, except for the northern parts and the large Tsumeb-Otavi-Grootfontein groundwater aquifer. The country is deficient in surface water, and availability of water from all three major perennial rivers is subject to agreement with neighbouring countries.

281. In Namibia, the main sources of drinking water are piped water, boreholes, protected wells, stagnant water and flowing water/rivers. The Government, through the Ministry of Agriculture, Water and Forestry, has, since independence, made concerted efforts in developing infrastructure to further enhance the provision of affordable and safe water in rural areas. In doing so, the Government has taken a holistic and participative approach that governs both the formulation and implementation of the strategies and policies in relation to rural water supply. This approach resulted in the development of two important policy documents, namely Water and Sanitation Sector Policy and Community Based Management Strategy.

282. Namibia has a total of 126 bulk national water supply schemes to supply water for domestic, stock watering, mining, irrigation and industrial purposes. In the 2009/2010 Namibia Household Income and Expenditure Survey it was reported that 75% of all households have piped water as their main source of drinking water, 12% boreholes or protected wells, 8% stagnant water and 5% flowing water/rivers. A large percentage of urban households use piped water: 99% compared to 58% in rural households.

283. The NHIE survey further revealed that 72% of the households in the country are situated less than 1 kilometre from their source of drinking water. Small percentages of households, 20 and 8% have up to 2 kilometers respectively in distance between household and the source of drinking water. Out of all households 7% have a distance of 3 kilometers or more. Among urban households 96% have a distance of less than 1 kilometer to a source of drinking water. In the regions of Khomas, Erongo and Otjozondjupa 97, 95 and 91% of households respectively have a distance of less than 1 kilometre between the homestead and its source of drinking water.

284. In the regions of Kavango, Ohangwena and Oshikoto, the distance to the source of drinking water is 3 kilometers or longer.

285. There is a strong relationship between the income level of the household and the distance to the source of drinking water; the higher the income, the closer the drinking water source is to the household.

286. Water is used for domestic purposes, in agriculture (livestock, watering and irrigation), industries, mining and manufacturing. Parliament enacted the Water Resources

Management Act, Act 24 of 2004, to preserve water. The Ministry of Agriculture, Water and Forestry (MAWF) is the regulatory body for water resources in the country that has to make sure that water supplied to communities by Namwater, Local Authorities and Rural Water Supply is of good quality to improve health. The Ministry of Health and Social Services is responsible for monitoring water-related diseases that can emanate from unsafe disposals into the water resources.

Human development

Trends in key indicators

Indicator	*1995*	*1996*	*1997*	*1998*
Human Development Index (HDI) Global	.611	.573	.570	.644
HDI Rank	108	116	118	107
HDI (Namibia)	n/a	.734	.744	.770
Human Poverty Index (HPI) Global	n/a	n/a	45.1	30
HPI (Namibia)	n/a	n/a	26.9	20
GDP per capita (N$)	5,092	5,120	5,098	n/a
GDP per capita (US$)	2,107	1,957	1,984	n/a
GDP growth rate	3.3%	3.0%	1.8%	n/a

Source: UNDP, Human Development Reports; Namibia Human Development Reports (various).

287. The country has made progress in the areas of health, education, poverty eradication, and gender equity, welfare of children, governance, population and environmental management. However, its nutritional levels fall well below those of a middle-income country, the output of the educational system leaves much to be desired, women have made gains in education but their status has changed little, etc. Now the country faces an unprecedented threat from HIV/AIDS.

Human development and poverty in Namibia

288. Namibia's human development has risen significantly, from 0.570 in 1997 to 0.644 in 1998. This is reflected in the improvement of Namibia's ranking from 118 in 1997 to 107 in 1998 among the countries of the world. Many of the gains, however, can be attributed to one single factor: the improvement in educational enrolment and literacy. Though these improvements are in some degree attributable to corrections in previous data errors, they partly reflect national policy that heavily emphasizes education and have been reported in previous Namibia Human Development Reports.

289. The state of reform in economic growth, poverty and equity at the national level remains a cause for concern. The economy grew by 1.8% in 1997. Inequity remains endemic. The richest 10% of society still receives 65% of the income, leaving only 35% for the remaining 90%. In other words, half of Namibia's population survives on approximately 10% of the average income, while 5% enjoys incomes that are five times the average. The ratio of per capita income between the top 5% and the bottom 50% is about 5:1.

290. Human development in Namibia correlates highly with where a person lives in the country and the person's mother tongue. This is reflected in the regional human development indices of Khomas and Caprivi, which are 0.858 and 0.538 respectively. Generally, as one moves from south to north, the regional human development indices decline. Kavango, Ohangwena and Caprivi are at the bottom of the development list, the

latter two trading positions in 1998. Namibia has been experiencing growth in both her economy and human development since independence in 1990. With its GDP per capita income of US$ 2,000.00, Namibia qualifies as a middle-income country. This figure hides some disparities. Namibia remains a country of extreme inequities, such that the richest 10% of the society receive 65% of the national income. Thus 90% of the population shares 36% of the national income.

291. In order to reduce or eliminate the inequalities, Government policy aims at investing in human capital. Thus, Government has prioritized education, training, health, agriculture and rural development. Consequently, primary school enrolment has increased from 60% in 1990 to 95% in 1999. In the health sector the primary health-care strategy has been established, with health-care expenditure up to 6% of GDP in 1993.

Human Development Index

	1995	*1996*	*1997*	*1998*	*1999*
Global HDI for Namibia	0.611	0.573	0.570	0.644	0.638
GDP per capita ranking	77	79	83	85	71
HDI ranking	108	116	118	107	115
GDP rank minus HDI rank	-31	-37	-35	-22	-44
Namibian HDI (from NHDR)	0.734	0.744	0.770	0.651	0.603

Source: UNDP, Human Development Reports 1995-1999, Namibian Human Development Reports 1996-1998.

292. The discrepancy in ranking between income and human development is partly a reflection of the country's apartheid system, when the education and health systems were not developed to the level of a "middle income" country. The apartheid system produced a society of extreme inequalities. The majority of Namibians lead lives that in most respects resemble those of any sub-Saharan African country. Data from 1993 reveal Namibia as one of the most unequal societies in the world, as illustrated by a Gini coefficient of 0.70. It is more unequal than countries such as Guatemala or Brazil.

293. In some areas, notably access to education, there has been progress; however disparities continue in the administrative regions, with marked gaps in other variables such as life expectancy and secondary school promotion. Namibia's HDI for 1999 dropped from the 1998 level. Most of the poor (i.e. 70 per cent) live in the rural communal areas, with women and children making up the biggest proportion. Males leave the communal areas looking for employment.

294. In the north-central and north-eastern regions of the country, subsistence farmers grow food for their own consumption, but low and variable rainfall in the communal-tenure farming areas presents major constraints.

295. One of the most vulnerable groups, who are food-insecure and are constantly affected by hunger and malnutrition, is the San community, who are hunter-gatherers. They do not grow their own food and are wholly dependent on the Government's relief programme, even during the rainy season.

296. This is due to the fact that they are nomads and traditionally relied on wild animals for their food requirements. However, that has changed because the new environment policy forbids the slaughter and capture of wild animals.

297. Most of the economic activities in the past took place in a few centres of the country, such as the capital Windhoek, the port of Walvis Bay and the mining sites, which caused

high migration to these areas, resulting in problems such as an overconcentration of people in urban centres, and high unemployment, insufficient housing and a high crime rate.

298. At independence in 1990, the Government made poverty reduction one of its central goals and objectives in the first National Development Plan (NDP1). During the period under review, some progress was realized with regard to reducing levels of rural poverty, more equitable distribution of the country's wealth, and equitable access to productive resources.

299. In 1994, 47 per cent of the total households were regarded as poor, while 13% were severely poor, and as such the Government's intention was to reduce the proportion of poor households to 40 and severely poor households to 7% from 47 and 13%, respectively, by the year 2000. Since independence, overall poverty reduction has been receiving greater attention, though there remains much to be done.

300. The National Agricultural Policy, which was put in place in October 1995, addresses the difficult rural development problems caused by many years of neglect under the colonial administration. It provides an enabling environment for increased food production by smallholder producers, and improvements in employment opportunities, income generation and household food security and, above all, the nutrition status of all Namibians.

301. The food security situation in Namibia is reflected in the poor nutritional status of a large percentage of the Namibian population. Widespread undernutrition amongst children under than five years old is a very common problem.

Article 12: Right to health

302. The health services of Namibia are run by the Ministry of Health and Social Services. At independence, the country inherited a fragmented health system based on racial segregation and marked by a concentration of infrastructure and services in urban areas. Parliament passed the Hospitals and Health Facilities Act No. 36 of 1994 to consolidate and repeal the laws relating to State and private hospital health facilities, which are broadly defined to include clinics, pharmacies and laboratories. The Ministry of Health and Social Services has received a relatively high share of funds from the national budget since independence. The financial resources allocated to the Ministry have contributed to a number of health sector reforms in order to expand the availability of health facilities in rural areas, which has taken place in the area of primary health care, and a significant increase in the coverage of various services as well as the general improvement of health services in the country.

303. As regards the right to physical and mental health of citizens, the Government of Namibia has a National Health Policy. The primary health-care approach of the World Health Organization has been adopted as part of Namibia's health policy. The system inherited at independence has been reoriented and the health districts have been strengthened. A Comprehensive Primary Health Care Programme has been implemented since independence, in all health districts in the country.

304. The Namibian Constitution, in article 15(2), defends children from economic exploitation which might impair their health or physical development.

305. The main objective of the Government in the delivery of health services is to improve the health of the Namibian population through the provision of relevant preventative, curative and rehabilitative services that are affordable to all Namibians.

306. There are State hospitals in virtually all major towns in the country. In smaller towns, villages and rural settlements, there are well equipped and staffed clinics and health-care centers that are operated by the Ministry of Health and Social Services. Windhoek, the

capital city, has three private hospitals, and there are six more private hospitals in the major towns of Otjiwarongo, Tsumeb, Walvis Bay, Swakopmund and Ongwediva.

307. The Demographic and Health Survey of 2006 revealed that 30% of households in Namibia are less than 1 kilometre to the nearest clinic or hospital and 34% are between 2 and 5 kilometres. However, 7% are more than 40 kilometres away. Urban households have shorter distances to health facilities than households in rural areas. Khomas, Erongo and Oshana are the three regions in which households are less than 5 kilometres to a clinic or hospital. In other regions, such as Ohangwena, Omaheke and Oshikoto, the distance is more than 6 kilometres to health facilities.

308. The most readily available services are immunization and education on HIV/AIDS, including the use of condoms and reproductive health.

309. Most women deliver in health facilities countrywide. This service is also provided in all hospitals and health centres. Although the health policy calls for this service also to be provided in clinics, currently only emergency deliveries are provided at clinics. This is due to limited personnel and space, as well as required delivery supply at the clinics.

HIV/AIDS: a major threat to human welfare and the Namibian economy

310. This report gives an overview of the situation of HIV and AIDS in Namibia by the end of 2000. Figures in this document are based on the reports of public health facilities compiled by the Ministry of Health and Social Services (MOHSS), as well as data from the National Blood Transfusion Services (NAMBTS). In 2000, reported numbers of diagnosed HIV infections were slightly lower than in 1999, while the number of hospitalizations and deaths from HIV/AIDS continued to increase.

311. The impact of HIV/AIDS is affecting development in Namibia, with Zimbabwe, Botswana and Namibia having the highest prevalence rates of HIV/AIDS of adults aged 15-49 years in the southern African region and the world. According to the 1998 statistics of UNAIDS, some 23% of Namibia's total population are living with AIDS. The social and economic impact of this reality will jeopardize the post-independence progress in the country. In 1996 Namibia registered a total of 165.5 per 100,000 cases of AIDS – the highest in the SADC region.

HIV statistics

312. In 2009, a total of 17,276 new infections were reported by the Namibia Institute of Pathology (NIP) of the Ministry of Health and Social Services, compared to a total of 14,691 in 2000 and 14,866 in 1999. The total number of HIV-positive diagnoses was 82,887 by the end of 2000. From January to June 2001, an additional 7,522 new HIV infections were reported, bringing the total of HIV infections by the end of June 2010 to 90,409.

Hospitalizations for HIV diseases

313. This is an important indicator of the workload in hospitals as well as the overall burden on health services due to HIV/AIDS-related diseases. In 2000, a total of 7,368 persons were hospitalized for HIV/AIDS. This is a continued increase as compared to the 1999 figure of 6,878 hospitalizations.

Deaths attributed to HIV/AIDS

314. The number of deaths in the 15-49 age group continues to increase, and it accounts for the majority (51%) of all reported deaths. Many of the deaths in this age group are directly attributable to AIDS. The increasing number of deaths from tuberculosis,

pneumonia and diarrhoea in this age group suggests that HIV is the underlying cause in many of these cases.

315. The total reported number of deaths in hospitals from AIDS in 2000 was 3,388. This brings the total number of reported deaths from AIDS to 12,067 since the beginning of the pandemic. There are 75,681 people who are on ARV treatment as at March 2010.

Life expectancy (source: WHO, 2009)

316. Life expectancy at birth:

- Males: 64.0 years for males;
- Females: 66.0 years for females;
- Overall: 60.9 years.

Number of health professionals per population

317. The number of health professionals per population according to the Human Resource Development report of 2001 of the Ministry of Health and Social Services was given as follows:

	Per entire population	*Per 10,000*
Doctors	3,557	2.7
Pharmacists	11,538	0.86
Dentists	34,615	0.28
Registered nurses	703	14.2
Nurses	646	15.4
Medical technologists	22,785	0.43
Health inspectors	37,500	0.26
Social workers	9,730	1.0

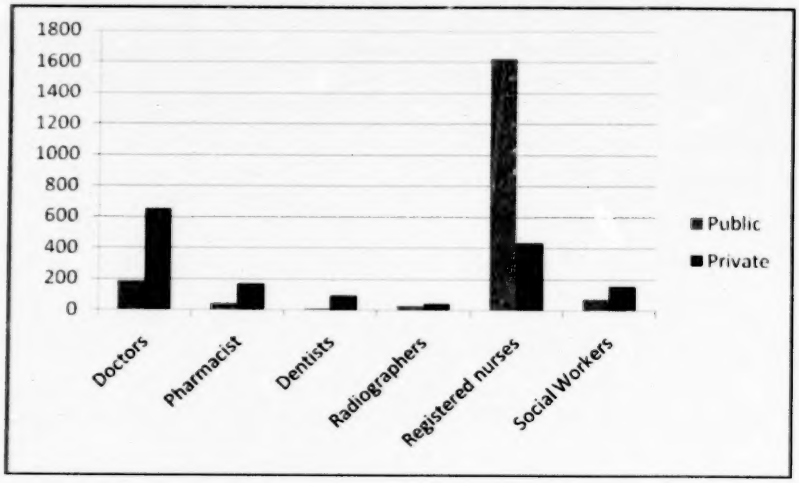
Sources: MoHSS, Human Resource Development Report, 2001.

Ratio of health professionals to the population in public sector 2007/08

Professional category	*Number*	*Ratio per national population*
Doctors	190	1:9,473
Registered nurses	1,658	1:1,974
Pharmacists	44	1:84,294
Dentists	13	1:107,383
Social workers	76	1:41,847

Sources: MoHSS, Human Resource Development Report, 2007/08.

Distribution of health professionals, by public and private sectors, 2007/08



318. The pool of skilled workers is unevenly distributed, with a high concentration of doctors, pharmacists and dentists in the private sector, although the public sector is the largest provider serving about 80% of the total population. The only professional cadre where the public sector fares better is with the registered nurses.

319. For the overall health sector, the doctor/population ratio was above the WHO benchmark of 2.3 doctors per 1,000 population. However, when this is classified by private and public, the ratio is far below the benchmark for the public sector.

320. The overall health of a nation is usually measured at outcome level by way of indicators such as fertility and mortality rates. These indicators are composite in nature. In other words, they are influenced by a multitude of factors such as knowledge, attitudes, and the practices and behavior of individuals, families and communities on the one hand, and on the other hand by the availability, accessibility, quality and effectiveness of programmes and services supplied by the various providers. Achievements at outcome level must therefore be credited to all these players, as well as to the quality of their cooperation and the stewardship of the health system in its widest sense.

321. The 2006 NDHS finds good progress at outcome level when compared to both the 2000 and 1992 NDHS results. The total fertility rate (TFR), a measure of the average number of children a woman is likely to have during her lifetime, has decreased by 22% from 5.4 in 1992 to 4.2 in 2000 and to 3.6 in 2006. The infant mortality rate (IMR), i.e. the number of deaths amongst children less than one year of age expressed per 1,000 live births decreased considerably from 57 in 1992 to 38 in 2000 but increased again to 46 in 2006. Furthermore, the under-5 mortality rate, that is, the number of children under 5 years of age who died, out of 100,000 births, increased from 64 to 68 in 2000 and 69 in 2006.

322. The health situation of the San community in the Otjozondjupa and Omaheke regions has been reportedly worse as compared to the entire country. Geographically, both the Ohangwena and Kavango regions have the highest maternal mortality rates. The Ministry of Health and Social Services hascommitted itself to addressing the concern for the marginalized communities by focusing on appropriate interventions for the scattered San community. The Ministry is providing outreach services to these communities.

323. In Ohangwena and Okavango, specific reproductive health programmes have been implemented. The Reproductive Health Programme has been given the highest priority. The immunization programme has been expanded to address and control the diseases that kill children. The Ministry has increased the accessibility of health services and all clinics are accessible within a radius of 10 km of all communities.

324. The Ministry exempts the indigent from payment for curative services, while all primary health-care services are offered free of charge. The Ministry of Health and Social Services has put in place criteria for exemption from user fees. The elderly are included in this group. Only a very small proportion of the elderly, those who can afford private health care insurance, may be affected by rising costs. The vast majority, more than 90%, make use of the Ministry's services, which are offered free of charge.

325. The Ministry has put in place Regional Development Committees, consisting of politicians and other community leaders and key informants. These Committees meet on a regular basis. At constituency level, Development Committees have also been put in place. Health districts have Health Committees and most clinics have Community Committees where all primary health-care concerns are discussed and attended to.

326. The Ministry of Education incorporated health education into its curriculum. Health issues are incorporated in the Life Skills curriculum at schools. The Ministry of Health and Social Services has a School Health Programme through which schools are visited. The outreach programme of the Ministry of Health and Social Services provides education to sections of the community that they reach.

327. The Government of Namibia has, since independence, been consistently supported by various development partners. The Ministry of Health and Social Services has been assisted by UNICEF, WHO, UNFPA and other partners in health.

328. During the past (colonial time) until after independence, health services in rural areas were provided and managed on an ethnic basis. Thus, the pre-independence health system was curative in nature, highly fragmented and inequitable. Since independence, the Government has been transforming the Namibian health system in order to make it compatible with new international objectives and goals.

Number of health facilities

329. The number of health facilities constructed after independence is the following:

Clinics	New 228 Upgraded 40
Total clinics	268
Health centres	New 6 Upgraded 37
Total health centres	43
Hospitals	New 19 Upgraded 16
Total hospitals	34
Regional management team offices	3

Source: MoHSS, Physical Facility Planning 2008.

330. The Government's main objective in the delivery of health care is to "improve the health of the Namibian population through the provision of relevant preventive, primitive,

curative and rehabilitative health services which are affordable and accessible to all Namibians". Additional principles guiding the formulation and implementation of health policy are equity and community participation.

331. During the Population and Housing Census of 1991, the infant mortality rate was reported at 57 per 1,000 live births, and during the 2001 census it was reported to be 48%. The probability of dying before the fifth birthday is 83 per 1,000 live births.

332. Since 1990, the MOHSS has implemented an Expanded Programme on Immunization (EPI), which follows guidelines recommended by the World Health Organization (WHO). The Ministry's policy requires that all children should receive a BCG vaccination against tuberculosis, three doses of DPT vaccine for the prevention of diphtheria, pertussis (whooping cough) and tetanus; three doses of polio vaccine and one dose of the measles vaccine. Children should receive all these vaccines by the time they reach 12 months of age. The vaccinations received by children are usually recorded on a health passport, which is given to the mother. Ninety percent of children between the ages of 12 and 23 months receive the BCG vaccination every year.

333. Concerning mental health, the present situation, as stated in the policy framework of the Ministry of Health and Social Services (MOHSS) (1998), is the overall objective to improve and maintain the physical and mental health status of all Namibians and to improve and maintain the social well-being, self-reliance and coping capacities of Namibian individuals, families and communities.

334. The policy framework contains advice on the provision of remedial and psychosocial rehabilitation services using methods such as counselling, cognitive and behavioural therapies, motivational interviews, group therapies, play, music therapy and life skills training.

335. The Mental Health Policy is under preparation and the relevant legislation is currently being reviewed, as it dates from pre-independence times. Improvement in the mental health of the population is difficult to measure. Therefore, the mental health status is usually presented by data on the prevalence of mental illness and of important risk factors. Reliable data is difficult to obtain because psychiatric epidemiology is complex, and worldwide it has been lagging behind compared to the epidemiology of many somatic diseases. Descriptive statistics on mental health in Namibia are in their initial stage.

336. There are two mental hospitals in the country: Windhoek Psychiatric Hospital and Oshakati Psychiatric Ward. All WHO stipulated required drugs for mental illness are contained in the "Nedlist" (Namibia Essential Drugs List). The National Drug Policy for Namibia states in its chapter 6, "Drug Supply", "Aim: to ensure that essential drugs of high quality are available in adequate quantities to meet the health needs of the population in all parts of the country at the lowest possible cost." In chapter 7, "Rational Drug Use" the aim is to promote rational prescribing, dispensing and use of drugs by all health workers and to encourage and support the informed use of drugs by the community."

337. Traditional healing in Namibia pays attention to cultural beliefs and concepts, the personality of the patient and the social support system, and favours a holistic approach. The potential of traditional healing in mental health services has been acknowledged, and the MoHSS is committed to collaborating with various traditional healers. There are two traditional healers' associations, with over 5,000 registered members, including indigenous social workers, traditional birth attendants and health educators in the country.

Issues to be addressed in the next five years are:

a. Health status

b. HIV/AIDS

338. Problems such as HIV/AIDS remain the biggest challenge to the health sector as well as to the Namibian economy. The most important issue remains that of behavioural changes, care of HIV/AIDS orphans, and the straining of the MOHSS budget resulting from HIV/AIDS care.

339. The results from the biennial sentinel survey show that the incidence of HIV/AIDS rose from 19.3% in 2000 to 22.0% in 2002, and stabilized thereafter at 19.7% in 2004 and to 19.6% in 2006.

340. The MTP3 national goal is to reduce the incidence of HIV/AIDS to below the epidemic threshold of 1 per cent. The Ministry had made great strides in the five components of HIV/AIDS, namely, Enabling Environment, Prevention; Access to treatment; Care and Support Services; Impact mitigation; and Integrated and Coordinated Programme Management. Notable achievements include, among others:

- The launching of the National HIV/AIDS Policy (by His Excellency President Pohamba) in February 2008, which has been widely distributed;
- Hosting the first National HIV/AIDS Male Leaders Conference aimed at empowering them to mainstream HIV/AIDS response to all sectors in the country.

341. The cumulative number of people infected by HIV in Namibia is presented in the figure below.

Table 1
HIV infection: cumulative figures

	2004/05	*2005/06*	*2006/07*	*2007/08*
Projected number of HIV infections	174,000	179,500	187,000	202,000

342. In the 2007/8 financial year, 99,365 clients, compared to 31,050 in 2005/2006, received HIV voluntary counselling and testing (VCT) at 250 out of 338 public health facilities as well as 17 stand-alone community VCT centres.

343. The number of eligible clients on ARV increased from 29,767 in 2007 to 47,963 in 2008, exceeding the MTP3 target of 33,591 by 2007. ARV services increased from 43 health facilities in 2006/2007 to 57 health facilities in 2007/2008. The number of people on ART for the last three financial years is depicted in table below.

Table
Number of people on ART

	2005/06	*2006/07*	*2007/08*
Number of persons on ART in the public sector	18,968	40,400	50,600

c. Sexually transmitted infections

344. Sexually transmitted infections (STI) continue to pose a major significant health problem in Namibia, and for the reporting year a total number of 43,778 cases were reported. The best way to prevent STI is through condom use, whereby 24,606,720 male

condoms and 492,000 femidoms were distributed. The trend of condom distribution is displayed in the table below.

Table
Trend of condom distribution

Condoms	*2003/04*	*2004/05*	*2005/06*	*2006/07*	*2007/08*
Male condoms	9,700,000	16,300,000	18,632,736	28,000,000	24,606,720
Femidoms	32,000	50,000	43,240	450,000	492,000

d. Malaria

345. There was a drastic decrease in malaria morbidity during the year 2007/2008. A total number of 102,381 outpatient and 4,242 inpatient malaria cases were reported countrywide, compared to 319,676 outpatients and 27,690 inpatients during 2006/2007.

346. The highest number of cases (108,490) was recorded in Kavango, in the previous year, while 25,675 were recorded during the year under review. This was followed by Ohangwena region, which recorded 65,630 cases in the previous year and 19,104 cases in the current year.

Table 2
Malaria morbidity per region

Region	*2006/07*	*2007/08*
Caprivi	40,471	36,532
Erongo	382	210
Hardap	-	-
Karas	-	2
Kavango	108,490	25,675
Khomas	776	542
Kunene	4,746	5,704
Ohangwena	65,630	19,104
Omaheke	40	32
Omusati	12,304	34,666
Oshana	636	509
Oshikoto	26,551	10,336
Otjozondjupa	632	654
Namibia	**260,658**	**133,966**

347. Inpatient malaria cases also decreased, especially in Omusati region, which recorded a decrease from (from 15,695 to 1,160), followed by Kavango region (from 6,393 to 1,107) and Ohangwena region (from 1,889 to 695). There was a decrease in the mortality rate from 27/100,000 in 2006/07 to 10/100,000 in 2007/08. The malaria-related mortality for two financial years in absolute numbers is presented in the table below.

Table 3
Malaria-related mortality, by region, for the financial years 2006/07 and 2007/08

Region	*Total 2006/07*	*%*	*Total 2007/08*	*%*
Caprivi	134	21.9%	46	24%
Erongo	2	0.3%	1	1%
Hardap	3	0.5%	0	0%
Karas	2	0.3%	0	0%
Kavango	154	25.2%	40	22%
Khomas	21	3.4%	5	3%
Kunene	22	3.6%	13	7%
Ohangwena	120	19.6%	16	9%
Omaheke	2	0.3%	0	0%
Omusati	91	14.9%	43	24%
Oshana	37	6.1%	12	7%
Oshikoto	19	3.1%	4	2%
Otjozondjupa	5	0.8%	1	1%
Namibia	**612**	**100%**	**181**	**100%**

348. Strategies employed to reduce malaria morbidity and mortality include early diagnosis, prompt treatment, training of staff, expanding of spraying activities with coverage of 86.9% nationally, and distribution of mosquito nets among pregnant women and children under the age of five years with coverage of 68%.

e. Tuberculosis

349. Resistance to drugs for tuberculosis sufferers is already a major problem. In view of the fact that tuberculosis is increasing in line with the increase of HIV/AIDS, the introduction of new treatment methods will be required.

350. Namibia reported 15,244 cases of all forms of tuberculosis in 2007, which translates to 722 cases notified per 100,000 population. There has been a definite downward trend both in case notification rates (CNR) and in absolute numbers of TB cases reported since 2005. HIV infection remains the major driver of the current TB epidemic. 59% of TB patients who were tested for HIV were HIV-positive.

351. Regions with particularly high case notification rates during the reporting period were Hardap (1,294/100,000), Erongo (1,228/100,000) and Karas (1,100/100,000). These regions were also the top three in 2005/2006, but all showed significant decreases in case notification rates. The national case notification rates are presented in the table below.

Table 4
Comparison of TB case notification by region, for the financial years 2006/07 and 2007/08, Namibia

	2006/07		*2007/08*	
Region	*Cases per 100,000 population*	*Ranking by CNR*	*Cases per 100,000 population*	*Ranking by CNR*
Hardap	1,251	2	1,294	1
Erongo	1,360	1	1,228	2

Region	2006/07		2007/08	
	Cases per 100,000 population	Ranking by CNR	Cases per 100,000 population	Ranking by CNR
Karas	1,132	3	1,100	3
Oshikoto	1,038	4	830	4
Caprivi	786	7	801	5
Khomas	859	5	781	6
Oshana	830	6	703	7
Otjozondjupa	751	8	689	8
Omaheke	643	9	641	9
Kavango	641	10	615	10
Ohangwena	434	12	539	11
Omusati	505	11	516	12
Kunene	351	13	329	13
Namibia	**814**	**All**	**722**	**All**

352. The treatment success rate in new sputum smear positive PTB cases was 76%, which is lower than National and Global target of 85%. Treatment success was negatively affected by a significant number of defaulters, deaths, transfers and treatment failures. In addition, the Ministry experienced a problem of multi drug resistant (MDR) TB, which added challenges to the success of treatment (see the table below). In addition, the country reported five cases of extensively drug resistant (XDR) TB during the same period.

Table 5
Number of MDR and XDR TB cases per region, 2007/08

Region	Number of reported	
	MDR TB	XDR TB
Caprivi	13	1
Erongo	32	0
Hardap	15	0
Karas	15	0
Kavango	45	0
Khomas	31	1
Kunene	5	0
Ohangwena	15	0
Omaheke	4	0
Omusati	30	1
Oshana	-	-
Oshikoto	27	2
Otjozondjupa	22	0
Namibia	**254**	**6**

353. Strategies implemented by the TB programme include advocacy and social mobilization, launching of the TB-Combi Strategy and expansion of the laboratory network for TB diagnosis and maintenance of an uninterrupted supply of anti-TB medicines.

f. Nursing care

354. Nursing care needs dedicated attention, which must include continuing on-the-job professional development for all nurses to address the problem of negative attitudes among nurses, more especially when it comes to standards of patient care.

g. Policy formulation

355. The focus of the Ministry will be finalization of legislation, policies governing the programme interventions more especially for HIV/AIDS, Malaria, Tuberculosis and environmental health.

h. Birth registration of children

356. Namibia was among the first African countries to ratify the Convention on the Rights of the Child, which states that all children have the right to be registered immediately after birth. The Ministry of Home Affairs and Immigration, with the assistance of the Ministry of Justice, is responsible for the normal birth registration and issuing of birth certificates of both newborn babies and other citizens. In the near future, this Ministry of Home Affairs and Immigration together with the Ministry of Health and Social Services are planning to expand birth registration points around the country, especially to hospitals. As from the end of September 2008, all the babies born in Windhoek, in Katutura Hospital are being registered immediately and are issued with birth certificates.

i. Capacity-building

357. The Ministry of Health and Social Services will strengthen the existing capacity-building interventions. Emphasis will be placed on ensuring the training of the required number of staff especially much-needed technical staff, namely doctors, dentists and pharmacists, and medical technology.

j. Physical facility planning and construction

358. The focus will be put on the construction and renovation/upgrading of facilities in needy areas as identified by the continuous analysis as part of physical facility planning exercises.

Article 13: Education

The Constitution and the Education Act of 2001

359. Article 20 of the Namibian Constitution provides that all persons in Namibia shall have the right to education. It further provides that primary education shall be compulsory and shall be provided free of charge at State schools. In 2001, Parliament passed the Education Act (Act 16 of 2001) to give effect to the Constitution and other international instruments.

360. Soon after independence in 1990, all schools in Namibia were desegregated in line with the Namibian Constitution and the Education Act, Act 16, of 2001. The different classification of schools belonging to different racial groups has all but disappeared. All government and private schools are now open to all Namibians regardless of race, colour, religion or ethnic background. The Ministry of Education established the Directorate of

Adult and Continuing Education to cater for the educational needs of adults and out-of-school youth. There are over 1,700 schools and about 20,333 teachers in the country for about 570,623 learners who enrolled in school in 2007, but there are also many children who are not in school. The University of Namibia and Polytechnic of Namibia provide tertiary education. The University of Namibia (UNAM) was ranked 16th amongst the best 100 African universities in the year 2011. Both institutions have established centers in all major towns. In addition, there are five UNAM campuses, four vocational training centers and three agricultural colleges throughout the country. Learners at government high schools as well as the students at tertiary institutions have the right to elect their student representatives.

361. Namibia spends more on education per head than most developing countries, but commensurate educational outcomes have yet to be achieved. Various studies have shown the importance of human resource capital for the future prosperity of the country, especially as knowledge-based industry comes to be more dominant as the country moves towards Vision 2030.

362. There are public schools in all the major towns throughout the country, with several privately operated schools in the main centers of the country. About 80% of the population aged 15 years older is literate, and 65% of people aged 6 to 24 years are enrolled in schools. About 42% of people aged 15 years and older have completed their primary education, while 15% have completed secondary education.

Right to education

363. The curriculum is based on the Namibian Constitution and the Education Act. The Constitution, in Article 20, states that education is a right for all persons, and it is the responsibility of the Government to provide education. The Education Act defines basic education as Grades 1-12, and as part of the provision demanded by the Constitution, this curriculum sets out the principles and intended learning for basic education.

364. The Namibian Constitution states that formal basic education is free and compulsory from the beginning of the school year when the child reaches the age of 7 until the last school day of the year when the child reaches the age of 16, or when s/he completes primary education, if before then. Under the Education Act (Act No. 16 of 2001), free basic education is extended to Grade 12, but is not compulsory beyond the limits set in the Constitution. The regulations of the Education Act state that learners who turn 6 years before or on 31 December should be admitted to school the following year. In cases of overage enrolment, permission must be obtained from the Regional Director of Education if a learner is aged 10 or more before 31 January in the year when they are to start. Free education in the context of basic education means that no fees are charged for attendance, tuition or textbooks. In Grades 10 and 12, a registration fee for the examination is required. After a Cabinet decision, as of 2013, parents are no longer expected to provide materials for the learner, such as pens, pencils and notebooks, or to contribute to the school development fund. This decision has been welcomed as it promises to ensure access to education for all Namibian children. The Ministry of Education has also introduced a laudable policy of mobile schools for the Himbas, satellite schools for the San (in accordance with their nomadic lifestyle) and a national school feeding programme for poor communities.

365. Basic education is subdivided into five phases: Pre-Primary, Lower Primary Grades 1-4, Upper Primary Grades 5-7, Junior Secondary Grades 8-10, and Senior Secondary Grades 11-12.

366. Formal basic education is for all from Pre-Primary to Grade 10, after which there are different opportunities; entrance into formal Senior Secondary education, vocational education and training, direct entry to employment, or distance learning. Throughout basic

education, HIV and AIDS education, Health and Wellness education, Human Rights and Democracy, Information and Communication Technologies (ICTs) and Environmental learning are integrated throughout and across the curriculum. Each of these issues deals with particular risks and challenges in Namibian society.

Structure and substance of basic education

367. The National Curriculum for Basic Education builds on the experience and achievements of the first cycle of Namibian curricula and syllabuses that were introduced in the 1990s. These were the curricula for Basic Education (then Grades 1-10), Senior Secondary education, and Special Needs education. It continues the foundation laid in *The Constitution of The Republic of Namibia (1990)*, *Towards Education for All: A Development Brief* (1993), and draws mainly upon the *Report of the Presidential Commission on Education, Culture and Training* (1999), *The Education Act (2001)*, *The Language Policy for Schools in Namibia (1996)*, *The Language Policy for Schools in Namibia discussion document 2003*, *ICT Policy for Education* (n d.), *Learner-Centred Education in the Namibian Context: A Conceptual Framework* (2003), the *Special Education Policy* (2005), *Namibia Human Capital and Knowledge Development for Economic Growth with Equity* (2005), as well as curriculum and syllabus reviews and revisions by NIED since 2002, and other research, monitoring and evaluation reports.

368. It responds to recent changes in Namibian society and to emerging challenges such as globalization and HIV and AIDS. It is directed towards helping achieve the national development goals set out in *National Development Programmes* 2 and 3, the *Education and Training Sector Improvement Programme* (2006), and the long-term perspective of *Namibia Vision 2030* (2005). This curriculum has been developed to give direction to basic education towards the realization of *Namibia Vision 2030*. It also ensures continuity of the foundation principles of the Namibian education system described in *Toward Education for All: A Development Brief*, in 1993. The goal, aims, competencies, and core skills and key learning areas have been identified in relation to *Namibia Vision 2030*, as a curriculum for the future.

Gender dimension

369. Gender equity has many levels and many aspects. All elective subjects must be available for any learner irrespective of gender. The guiding criteria for the selection of subjects should be the interest, aptitude and ability of learners, but teachers must encourage learners to study subjects across the boundaries of conventional gender role stereotypes, and emphasize the advantages of doing so. Similarly, perceptions that girls are less able to succeed in mathematics and natural science, and girls' own self-perceptions of this nature, must be discussed openly and dealt with.

370. At a deeper level, the teacher's own attitude, expectations of different achievements from boys and girls, and classroom behaviour, is known to have a steering or filtering effect on the learners. The teacher can model positive role behaviour in terms of gender by being aware of how much attention and what sort of attention s/he pays to girls and boys, and by being aware of how girls and boys may react differently to certain types of behaviour, such as ironic comments, a negative facial expression, harshness, or apparent indifference. The learners' own stereotyped attitudes and behaviour towards each other, especially but not only, that of boys to girls, is also a strong influence. Teachers must be aware of when it is advisable to intervene and take up gender issues arising from negative attitudes or conflict situations.

371. Gender issues should be taken up explicitly in all subjects, and learners should be encouraged to examine stereotype gender roles and behaviours and how they have arisen and been perpetuated, and to find positive role models in terms of gender equity. In

teaching different subjects, the positive contributions that women have made and can make in areas of life where there has previously been male domination, and the value of men's participation in areas where there has previously been female domination, should be emphasized. Learners must be empowered to challenge and change role behaviours in themselves and others which lead to any form of coercion or violence, especially towards girls and women. They must understand the importance of mutual respect and equal sharing of practical work and caregiver responsibility in the home.

Inclusive education

372. Namibian classes are wide-band mixed-ability classes, with the inclusion of learners with a moderate degree of impairment. The impairment may be of no consequence whatsoever for learning ability, e.g. learners with physical impairments, learners with visual impairments, learners with hearing impairments, or learners with speech and language impairments. These impairments require little or no differentiation of teaching and learning, only the provision of the necessary facilities, learning aids and support materials. Facilities can include wide doors, ramps, and appropriate furniture. Learning aids and support materials can include large-print books for learners with low vision, sound books, voice software and a Braille printer for learners with visual impairments etc. In the case of schools that include learners with hearing impairments, the use of interpreters is recommended.

373. Other types of learners with moderate impairments do have some consequence for learning ability, such as learners with Attention Deficit Disorder (ADD), learners with cognitive impairments such as Down's syndrome, foetal alcohol spectrum disorder, and those with milder forms of socio-emotional behavioural problems. In these cases, extra attention must be given to the specific needs, aptitudes and strengths of the learner in the form of appropriate teaching methods, and specially adapted materials. Progress and achievement is to be regarded in relation to the learners' starting point and potentials. Learners with learning difficulties may not be able to achieve to the same level as other learners, but their achievements must be recognized. In inclusive education, social acceptance of different abilities of the learners with impairments as an equal member of the class is vital. This value should be held by all members of the class on an equal basis. It is important to know that the success of each learner will depend on the provision of enabling conditions for success based on an understanding that all are equal, and that no-one should be left behind. The caring, integrated society of *Namibia Vision 2030* begins in the classroom.

374. Only in cases where the degree of impairment or learning disability is such that a learner cannot benefit from full inclusion, should a continuum of service be provided to such a learner within the inclusive setting. The purpose of special service is to provide for the particular needs of these learners, but with an emphasis on preparing them for full inclusion in society.

375. Religious and Moral Education is offered through the school curriculum from grades 1 to 12 to ensure that the religious and moral education of the learners are in conformity with their parents' convictions and to have their children educated in the religion of their choice.

376. Corporal punishment is not allowed under the Namibian Constitution and the Education Act No. 16 of 2001, which means that inhuman discipline that is inconsistent with human dignity is abolished. Teachers who make themselves guilty of making use of corporal punishment are liable to disciplinary action or criminal prosecution.

Early childhood development and pre-primary education

377. In October 2006, the Cabinet took a decision that the responsibility for Pre-Primary Education would be transferred from the Ministry of Gender Equality and Child Welfare to the Ministry of Education. Consequently, the Early Childhood phase for 0-4 year-olds will remain with MGECW, while a Pre-Primary school year for 5/6 year-olds will become part of Basic Education. The purpose of the Pre-Primary Phase is to lay a solid foundation for learning throughout the formal education system. It is only the start of developing essential literacy and numeracy and skills for life and of establishing self-confidence and self-worth through personal and social development. If the foundation that is laid in this year is good, the learner will be well prepared to continue learning.

378. Good early childhood development and pre-primary programmes provide a stimulating environment for the all-round development of the child, which will lay a foundation for formal schooling. Universal pre-primary education enhances equity on entry to primary education, especially for children with learning disadvantages. Pre-primary education is not yet a prerequisite for entry to Basic Education, but will be extended as rapidly as possible throughout the country. Children who have attended early childhood development programmes and/or pre-primary education with appropriate pedagogy make better progress in formal education, and achieve better than those who have not. An appropriate pedagogy is learner-centred through free and structured play-learning.

Human rights and education

379. The Government of the Republic of Namibia recognizes that education is both a human right in itself and an indispensable means of realizing other human rights. Education is a basic human right and this right is a fundamental principle in Namibia's Constitution. Given our historical background of racial discrimination, segregation under apartheid rule and the war of liberation, human rights education is part of the teaching and learning programmes in the schools. Through the education programmes, Namibia believes that never again shall the nation be subjected to such dehumanizing conditions as was done through the apartheid system. One of the aims of the Ministry is to empower Namibian citizens with market determined knowledge and vocational skills. Through the evolvement and positive promotion of enlightened policies, the Ministry seeks to build and strengthen national institutions and sector capacity to produce more goods and services and value, and create jobs and employment opportunities for all Namibians.

380. The precise and appropriate application of the right to receive education depends on the conditions prevailing in the country, and that education and all its forms and at all levels shall exhibit the features of accessibility, acceptability and adoptability. The Government has and is continuing to take steps through international assistance and cooperation towards the full realization of the right to education.

381. Since 1990, donor aid programmes and bilateral agreements have been assisting Namibia in providing near universal access to basic education for all children, mainly via the construction of new schools, the addition of classrooms to existing schools, the replacement of "stick-and-mud" classrooms with permanent structures, and the provision of technical assistance. Donors also contributed significantly in the fields of literacy training, fundamental education and the development of the Namibia College for Open Learning.

382. A democratic education system is organized around broad participation in decision-making and the clear accountability of the people in leadership positions and those involved in decision-making. In Namibia, democratic participation in education has been improving since independence. The Ministry has been making efforts as early as 1991 to sensitize learners, teachers, parents and communities regarding their democratic role and

responsibilities in education. In 1995, the Ministry introduced a structure that allows more democratic participation in education.

383. The structure is made up of the Regional Education Forum, composed of representatives of school boards, one representative from every constituency or inspection circuit, representative of community leaders, representative of church bodies, representative of workers (trade unions), representative of teacher unions and representative of student organizations.

384. In addition to this body, there are school boards, composed of equal representation from parents committee and teaching staff, school management committees, teachers unions, student organizations and parents all having an active role in educational matters.

385. The Ministry is working on the decentralization process of some of its programmes and activities to consolidate and enhance the already decentralized activities of the seven education regions. The purpose of this exercise is to give regional and local authorities and the people at the grassroots levels decision-making powers in matters that concern them. It is important that this process should be extended to school community levels.

Formerly disadvantaged groups in education

386. Going along with the provision of education to school going age children and out-of-school adults is the provision of classrooms. One other target, therefore, was and still is to increase the number of schools and classrooms to ensure that there are sufficient places for all Namibians of school going age. Educationally marginalized children (EMC) are a diverse group, and their educational needs differ from community to community. This group comprises children of farm workers, San children, Ovahimba children, street children and children in squatter areas. For most of the groups, two common reasons suggested as affecting their education are poverty and/or attitudes shown by non-marginalized groups.

387. In an effort to improve access to education for marginalized children, the Ministry, working together with non-governmental organizations (NGOs), has introduced programmes such as the Nyae-Nyae Village School programme in Otjozondjupa region, where the curriculum is community-based and the San language is the medium of instruction. In the Kunene region, the pilot mobile school project has started. The School Feeding Programme is benefiting most poor rural schools to keep the children of very poor families in school. The provision of twelve mobile school units for Ovahimba children in Kunene region on a pilot basis has materialized; the sponsorship of twenty San learners by the Royal Overseas League (ROSL) of U.K has been secured. The purpose is to enable those San learners to pursue their primary and secondary education and possibly proceed to tertiary education.

388. The policy document on EMC entitled: "National Policy Options for Educationally Marginalized Children" was completed and endorsed by the EMT; five Nyae-Nyae Village School San teachers have been granted a status of Grade 10 equivalence in 1998 and thus have been enrolled in the ISC programme; and through the Inter-sectorial Task Force a strong voice representing the plight of the EMC has been created and its Secretariat is housed in the Directorate of EPI.

389. Primary schools are decentralized to be within walking distance of most children, even in rural areas. Primary education starts at 7 years of age and covers Grades 1 to 7. Semi-automatic promotion is practiced.

390. However, the challenges are still to build more schools, because of the high number of children and to reduce the walking distance. The 2003/2004 HIES revealed that close to 46 per cent of households in Namibia are less than 1 kilometer from the nearest primary school, whereas 28 per cent of households are between 2 and 3 kilometers away and less

than 8 per cent are more than 21 kilometers away from primary school mainly in the regions of Omaheke, Kunene and Otjozondjupa.

391. In urban areas, 44 per cent of households were reported to be within 1 kilometer of high school compared to just 5 per cent of rural households. About 65 per cent of rural households are 11 kilometers or more from the nearest high school, and 25 per cent are more than 50 kilometers away from high school mainly in the regions of Omaheke and Kunene.

Primary education

392. The Government is committed to providing universal primary education to the entire Namibian nation. It aims at giving every Namibian equal opportunity to complete his/her primary education or to be in school until he/she attains the age of sixteen, whichever is sooner. Article 20 of the Constitution mandates the provision of free and compulsory primary education for all. Primary education is divided into lower and upper primary phases, covering grades 1-4 and grades 5-7 respectively. The entrance age for grade 1 is 7 years.

393. The medium of learning in this phase is the mother tongue/predominant local language. All learners take all subjects: the mother tongue/predominant local language, English, Mathematics, Environmental Studies, Religious and Moral Education, Arts, and Physical Education. The focus of the Lower Primary Phase is primarily on four areas: literacy, numeracy, broad knowledge of the immediate environment of the learner and personal health.

394. Effective quality schooling in a text-rich environment ensures that irreversible literacy and numeracy are attained. Literacy and numeracy can only become functional life skills when applied to the world around us: they are not meaningful as abstract skills. Environmental Studies and Religious and Moral Education provide broader knowledge from which, together with the learners' own experience and previous knowledge, the substance of literacy and numeracy is drawn. They also provide the learner with life skills in understanding the world around them. The themes and topics of Environmental Studies provide content areas for the integration of the whole curriculum. HIV and AIDS education starts in Grade 1, since the learners are still in the "Window of Hope" age range prior to sexual relationships, the generation who can be well educated and well prepared to counter the AIDS pandemic.

Upper primary (grades 5-7)

395. The Upper Primary level continues on a broad base, consolidates the foundation laid at Lower Primary, and develops it further. The medium of learning (except in the national language subject) is now English, only exceptionally supported by use of the mother tongue/predominant local language. The division into subject disciplines emerges more strongly in this phase. All learners take English, the Mother tongue/predominant local language, Mathematics, Natural Science and Health Education, Social Studies, Religious and Moral Education, Life Skills, Basic Information Science, Arts, and Physical Education. In addition, learners take one of Design and Technology, Elementary Agriculture, or Home Ecology. Entrepreneurial Skills are integrated in each of these.

396. Primary education focuses on foundation knowledge and skills – reading, writing and numeracy – and on preparing learners for entry into junior secondary education. Access to pre-primary education is still limited. Access is constrained by both supply and demand factors. Discrimination in access to education is prohibited by the Namibian Constitution, and is strengthened by anti-discriminatory education legislation, policies and regulations.

The target is that the majority of the people should have acquired basic skills of reading, writing, numeracy and understanding of sociocultural processes and natural phenomena.

397. The Education Act, Act. No. 16 of 2001, provides for compulsory primary education. Available statistics show that over 90% of children in the age group 6-16 years attend school. Primary education, in state schools, is free in the sense that no formal school fees are charged. Parents have expenses for school uniforms (non-compulsory) and contributions to school development funds determined and administered by elected School Boards. In the Lower Primary phase (Grades 1 to 4) the medium of instruction can be the home language or English, with English as a subject. From Grade 4 onwards, English is the medium of instruction.

398. Teachers in Namibia are staff members of the Public Service, but teacher salaries compare favourably with salaries in the public and private sectors and are, in comparison, among the highest in sub-Saharan Africa. Teachers are members of the Government service pension and medical aid schemes and share in the public service housing scheme, where this is available.

399. Accommodation (housing) remains a problem for teachers at remote rural schools. This factor inhibits the transfer of qualified and competent teachers to rural areas. Namibia, like many other Southern African Development Community (SADC) countries, has a high proportion of women in the teaching profession. In Namibia, women constitute more than 51% of the country's national population, which at the moment stands at 1.8 million. According to the EMIS, 1998, out of the 16,840 teachers in Namibian schools, there are 10,194 female teachers which represents 60% as against 6,655 (40%) males (EMIS, 1998). At managerial levels, female teachers tend even though they are much more than male teachers. The EMIS source shows 90,002 of the 13,971 teachers being female without any promotional (teaching) rank.

Secondary education

400. Secondary education is divided into junior and senior secondary phases covering grades 8-10 and grades 11-12 respectively. There is no constitutional obligation to provide free secondary education. Learners who pass grade 12 have several avenues for tertiary education and training. The flexibility in implementing admission policies is now limited by the Education Act (2003), which extends the first 12 years of schooling to all eligible children.

Junior secondary (grades 8-10)

401. The Junior Secondary phase extends the learners' knowledge and skills, strengthens their values and attitudes, and prepares them for continued studies and young adult life. This phase provides learners with the opportunity to explore a wider range of subjects to enable them to make informed subject choices for future career opportunities. It is more challenging, and a greater body of knowledge is mobilized to develop a higher level of understanding and skills. The curriculum becomes more diversified as learning areas are broken up into more separate subject disciplines, and a degree of choice is introduced.

402. The medium of learning (except in the mother tongue/predominant local language subject) continues to be English. All learners continue to take English and the mother tongue/predominant local language and Mathematics. The natural sciences are divided into Life Science and Physical Science, and the Social Sciences into Geography, History, Life Skills and Religious and Moral Education. In addition, Arts in Culture, Physical Education, and Basic Information Science are offered. At this stage, learners' ICTs skills are consolidated in order to be able to learn independently and collaboratively, and to do research, using ICTs. The element of choice is introduced in the pre-vocational area, where

learners choose any combination of two electives from the following table, depending on their interest and aptitude and what is available at the school. HIV and AIDS education takes on new significance as learners in this phase enter the High Risk age range (15-25), during which sexual relationships begin. It must be ensured that each and every learner is fully educated about HIV and AIDS and has the personal and social skills and competencies to wait until full maturity before engaging in a sexual relationship, and to lead a healthy, considerate life.

Senior secondary (grades 11-12)

403. The main purpose of the Senior Secondary phase is to prepare learners for adult life, tertiary studies or direct entry to employment. Much greater demands are made on the learners in terms of the level of cognitive, personal and social development, both in terms of academic achievement, taking greater responsibility for their own learning, and consolidating good work ethics and practices. Entry to the Senior Secondary phase in the formal system is decided on the number of points to be achieved, worked out on the basis of final grades from the Junior Secondary phase.

404. The medium of learning (except in the national language subject) continues to be English. All learners take Life Skills, Physical Education, and at least six subjects for the Namibia Senior Secondary Certificate examination. One of these must be English, and as from 2012 Mathematics will also be a compulsory subject. Learners specialize by choosing one of the options in a field of study, and one or two supplementary subjects from those offered by the school to make up a programme of six examination subjects.

405. The right of all persons to establish and maintain private schools is enshrined in Article 20 of the Namibian Constitution. In 1998, 76 schools out of a total of 1,489 (5.2%) were classified as registered private schools. Private schools charge enrolment fees and access to private schools is thus linked to the financial means of individual families. Conditions of registrations of private schools prohibit discrimination on grounds of race, sex, religion or ethnic origin, must apply to the Minister first for approval to do so. Parents and guardians are at liberty to choose between public schools, private or home schooling. Private or home school providers who want to adopt or supplement the public school curriculum in any way are at liberty to do so or may use an alternative curriculum.

Higher education

406. Namibia's higher education and training system is very young. Key public institutions are the University of Namibia (UNAM), and the University of Science and Technology (previously the Polytechnic of Namibia). The academic freedom and autonomy of the tertiary institutions is well respected. Both UNAM and the Polytechnic of Namibia are governed by their Councils with little, if any, interference from Government. The composition of Councils should ensure responsiveness to the needs of diverse constituencies, as stated in the Acts of both institutions. Membership comprises diverse stakeholders, including academics, administrative staff, students, public sector, professional associations, and communities in which the institution resides.

407. To improve the accountability of tertiary education institutions without risk of perceived political interference, the then MHETEC worked on a bill to establish the National Council for Higher Education (NCHE). The Bill was passed and proposes wide-ranging powers and functions of the NCHE, including: reviewing the strategic requirements of the system; setting system priorities; advising on budgetary matters; developing and executing a funding formula; monitoring trends in access, mobility, and graduate output; planning and coordinating the system; quality promotion; quality assurance; and accreditation of higher education institutions.

408. Other important functions that the NCHE should attend to are the establishment of a management information system, and the establishment of a monitoring and evaluation system. Membership of the NCHE will comprise a broad base of stakeholders, including representatives of the public sector (the parent Ministry, NPC, MoF), UNAM, the Polytechnic, and VTCs. It will also include a broad spectrum of organizations representing students, academic staff, women's organizations, disabled persons, churches, business, and labour organizations. This should give such a Council substantial legitimacy and moral authority. The work of the ACTE and the NCHE will be subsumed under the overall guidance of the National Education Advisory Council (NEAC), which is provided for by the 2001 Education Act.

Access and equity in tertiary education and training

Enrolment and outputs across institutions

409. Access to tertiary education and training has substantially expanded since independence. For the university, enrolment increased by 137 percent between 1995 and 2002. Enrolment through distance education programmes grew by about 230 percent, accounting for about 40 percent of the total enrolment by 2002. Enrolment for non-distance education programmes increased by about 100 percent over the past eight years. By 2002, enrolments were still very low in areas identified as having serious human resources shortages, such as science (7%), agriculture and natural resources (2%), and medical and health sciences (5%).

410. Women have consistently accounted for about 60 percent of the university enrolment. This is due mainly to their predominance in health sciences (excluding medicine), education, and in humanities and social sciences. To UNAM and Namibia's credit, however, it is noteworthy that by 2002, women constituted 40 percent (or more) of the enrolment in fields that are ordinarily dominated by men. While the overall picture is encouraging, more effort is still required to bring about gender equity in enrolments, especially where enrolment patterns may be determined less by students' choices and more by some currently undetermined barriers.

411. Concerning accessibility to higher education, though education is not free at this level in Namibia, access to institutions of higher learning is generally accorded to all students who have successfully completed the last level of general education, that is, grade 12. This, in simple terms, means that such students have satisfied all the requirements needed to enter tertiary education. There are, however, three factors which seem to militate against access into higher education, and these are: performance on the part of students, the financial resources and the capacity of the institutions in terms of the numbers of students they can accommodate.

412. Students, in terms of performance, are expected to have achieved certain points in grade 12 in order for them to be admitted to institutions such as the University and the Polytechnic. This is done not to curtail access, but rather to enhance the quality, efficiency and effectiveness of the system. It is an open secret that not all students who do remarkably well in grade 12 examinations have the means to pay for their tertiary education. There is also no way in which the Government can pay for all students entering tertiary education, though we have (Government loans) NSFAF for students whose parents earn less than N$ 150,000 per year. The current higher learning institutions mentioned earlier on are still small in terms of their capacity to accommodate substantial numbers of learners.

413. Every year, many students fail to enter the said institutions not because they do not meet the minimum requirements in their grade 12 final year examinations, but because of the paucity of spaces in those institutions. Against this background, it is clear that although access is granted to all students who pass grade 12, financial resources and the capacity of

the institutions will remain the factors that will militate against free access. Nonetheless, irrespective of the highlighted negative factors, access remains the key and the most highly regarded feature of the Namibian educational policy, others being equity, quality, efficiency and democracy.

Adult education

414. The Ministry of Education established the Directorate of Adult and Continuing Education to cater for the educational needs of adults and out-of-school youths.

Article 14

415. Namibia has no other territories falling under it, therefore article 14 is not applicable to Namibia since the country only consists of one territory with a unitary government.

Article 15: Right to culture

416. Article 19 of the Constitution of the Republic of Namibia provides that:

> "Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest."

417. The Ministry of Youth, National Service, Sport and Culture, through the Directorate of Arts and Culture, has been mandated to put the content of Article 19 into practical terms. Much positive work in this regard has been done to promote culture and national unity, and in addition, increasing attention is being given to the common national and international facets of culture in Namibia.

418. Recognition of the wide-ranging heritage in Namibia constitutes the acknowledgement of the contributions of individual communities which can be used to promote reconciliation and nation-building, and is the mandate/duty of the Directorate of Arts and Culture to implement the content of Article 19 into practice to combat the feeling of inferiority or superiority among the communities in Namibia.

419. High recognition is given to the heritage of the disadvantaged communities in order that their sense of human dignity can be restored.

420. In addition, Namibia has the following national as well as community libraries which provide services relating to information and research:

- National Library Services;
- Ministerial Library Services;
- School Library Services;
- Public Library Services;
- National Archives;
- Vocational Training Centers;
- Teacher Resource Centers.

421. Furthermore, Namibia has the following national structures or institutions that promote and provide services relating to culture:

- National Museum + Mobile Museum;
- National Theatre (decentralization);
- National Art Gallery (heritage collection);
- National Monuments Council (Historic sites);
- Cultural Promotion – (All Regions and National Programmes);
- Museums Association (national network of community and private museums);
- College of the Arts (local and national extension programmes);
- National Choral and Church Choirs; and
- Music Network with satellite centers.

422. The Government and private sector have built the following venues for cinemas, theatres as well as multipurpose centres:

- Windhoek theatre;
- 3 cinemas in Windhoek;
- 5 cinemas the in three Regions;
- ±700 School halls used for multipurpose events;
- Wide network of community-based arts and crafts supported by the Ministry;
- Several NGOs have well-established Craft development programmes, e.g. Rossing Foundation, etc.

423. The following cultural activities take place every year across the country:

- Regional cultural festivals;
- National cultural festival;
- Regional and national story-writing competitions, regional and national song competitions.

New bills and other programmes

424. The Heritage Bill and the Education and Culture Bill are still in the draft form which shall contain policy issues. Many agreements on bilateral cooperation have been entered into with other countries, which provide for cultural, educational, and scientific development.

425. Due to a lack of funds, various cultural groups are unable to participate in many cultural festivals, which is a constraint to art and culture development in Namibia. Initially, after Independence some donor agencies contributed to mapping the status quo and developing some aspects. Aid has been severely diminished and has been channelled to the Republic of South Africa.